

Article 2: Permits and Procedures

Draft, September 1, 2011

NOTE: This is the first full draft of the code – intended for review by city council, planning commission, city staff, and interested citizens. The provisions herein are intended to replace applicable land use regulations now found in ECC Titles 12 and 13. For clarification, we have indicated in (parentheses) whether each chapter is new or updates or replaces a current ECC chapter or section.

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15.20 Purpose/Administration

15.20.010 Purpose. (NEW)

The purpose of this article is to establish standard procedures for land use permit applications, public notice, hearings and appeals in the city. These procedures are designed to promote timely and informed public participation in discretionary land use decisions; eliminate redundancy in the application, permit review, hearing and appeal processes; provide for uniformity in public notice procedures; minimize delay and expense; and result in development approvals that implement the policies of the comprehensive plan. These procedures also provide for an integrated and consolidated land use permit and environmental review process.

15.20.020 Administration. (NEW)

The provisions of this article supersede all other procedural requirements that may exist in other sections of the city code. When interpreting and applying the standards of this LDC, its provisions shall be the minimum requirements. Where conflicts occur between provisions of this article and/or between this article and other city regulations, the more restrictive provisions shall apply. Where conflict between the text of this article and the zoning map ensue, the text of this article shall prevail.

15.21 Permit Review Process “Types”

15.21.010 Classification of permit review process types. (NEW)

Decisions on permit applications shall be classified as Type I, II, III, IV, or V, based on the amount of discretion associated with each decision. Procedures for the 5 different types are distinguished according to who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made, and whether an administrative appeal process is provided. The types of decisions are set forth in ECC 15.21.030 and the requirements for each type are set forth in ECC 15.21.040.

15.21.020 Determination of proper permit review process type. (NEW)

- A. **Determination by director.** The director shall determine the proper procedure for all permit applications. If there is a question as to the appropriate type of process, the director shall resolve it in favor of the higher type number.
- B. **Optional consolidated permit processing.** An application that involves 2 or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by the code. The applicant may determine whether the application shall be processed collectively or individually. If the application is processed under the individual procedures option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure. If the individual procedure option is chosen, the applicant will be eligible for any fee reduction contained in the current fee resolution.
(NOTE – CITY WILL NEED TO DEVELOP A FEE RESOLUTION)

- C. SEPA review.** SEPA review is governed by ECC Chapter 15.27 and shall be conducted concurrently with development project review. The following are exempt from concurrent review:
1. Projects categorically exempt from SEPA; and
 2. Components of previously completed planned actions, to the extent permitted by law and consistent with the EIS for the planned action.
- D. Decision-maker(s).** Applications processed in accordance with subsection (B) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision-maker(s). The city council is the highest, followed by the hearing examiner or planning commission, as applicable, and then the director.
- E. Hearings.** Permits are allowed only one open record hearing and one closed record appeal hearing, except for the appeal of a determination of significance which must be appealed directly to city council when it is issued and prior to any further review on the underlying permit.

15.21.030 Permit review process types, defined. (NEW)

- A. Review Process Type I.** These decisions are based on compliance with specific, nondiscretionary and/or technical standards that are clearly enumerated. Most of these decisions are made by the director. There are generally no notice or hearing requirements and no appeal opportunity. These decisions are not subject to environmental review under the State Environmental Policy Act (SEPA), codified at Chapter 43.21C RCW (also see Chapter 15.27 herein).
- B. Review Process Type II.** The director makes most of these decisions based on standards and clearly identified criteria. These decisions require public notice but typically do not include a public hearing. This process type requires that the director issues a written report that sets forth a decision to approve, approve with modifications, or deny the application. The director's report will also include any threshold determinations under SEPA or critical area final determinations under ECC Article 6. Such projects are appealable to the hearing examiner.
- C. Review Process Type III.** These are quasi-judicial decisions that are made by the hearing examiner or other designated body and involve the use of discretionary judgment in the review of each specific application. Type III decisions require findings, conclusions, an open record public hearing and recommendations prepared by the review authority for the final decision. Any administrative appeal of a SEPA threshold determination or critical area final determination shall be consolidated with the open record public hearing on the project permit, except a determination of significance, which must be appealed directly to city council when it is issued and prior to any further review on the underlying permit.
- D. Review Process Type IV.** These quasi-judicial decisions made by the city council and involve the use of discretionary judgment in the review of each specific application. Type IV decisions require findings, conclusions, an open record public hearing and

recommendations prepared by the review authority for the final decision. Any administrative appeal of a SEPA threshold determination shall be consolidated with the open record public hearing on the project permit, except a determination of significance which must be appealed directly to city council when it is issued and prior to any further review on the underlying permit.

- E. Review Process Type V.** These are legislative, non-project decisions made by the city council under its authority to establish policies and regulations regarding future private and public developments, and management of public lands. Type V actions include comprehensive plan adoption or amendment, area-wide rezones, annexations, adoption or changes to development regulations, and the siting of essential public facilities.

15.21.040 Permit review process types: Decision-making, procedures & notice requirements. (NEW)

- A. Decision making and appeal process.** Table 15.21.040(A) below sets out the permit review decision making and appeal processes for the 5 permit review process types.

Table 15.21.040(A) Decision making and appeal process for permit review process types.

	Type I	Type II	Type III	Type IV	Type V
Final decision made by:	Director	Director	Designated body	City Council	City Council
Recommendation made by:	NA	NA	NA	Designated body	Planning Commission
Open record pre-decision public hearing - decision	No	No	Yes	Yes	Yes
Open record appeal public hearing - appeal	No	Yes	No	No	No
Closed record appeal hearing	No	No	Yes	No	No
Appeal to:	NA	Hearing Examiner	Hearing Examiner	Superior Court	Superior Court or to the Growth Management Hearings Board if GMA action
Judicial appeal (see ECC 15.23.090)	Yes	Yes	Yes	Yes	Yes

B. Procedures. Table 15.21.040(B) below set out the permit review procedures for the 5 permit review process types.

Table 15.21.040(B) Procedures for permit review process types.

	Type I	Type II	Type III	Type IV	Type V
Pre-application meeting (see ECC 15.22.010)	No	No ¹	Yes	Yes	Yes
Notice of complete application (see ECC 15.22.040)	No	Yes	Yes	Yes	Yes
Notice of application (see ECC 15.22.040)	No	Yes	Yes	Yes	Yes
SEPA determination (see ECC Chapter 15.27)	No	Yes If applicable	Yes If applicable	Yes	Yes If applicable
Notice of hearing (see ECC 15.23.020)	No	No	Yes	Yes	Yes
Notice of decision (see ECC 15.22.080)	No	Yes	Yes	Yes	Yes
120 day review period (see ECC 15.22.070)	No	Yes	Yes	Yes	No

Notes/conditions:

1. A pre-application meeting shall be required for all major design review projects as set forth in ECC 15.25.030.

C. Notice requirements. Table 15.21.040(C) below set out the notice for the 5 permit review process types.

Table 15.21.040(C) Notice requirements for project applications.

	Send to property owners within 300'	Post property	Public notice	Send to agencies	Send to applicant
Notice of completeness (see ECC 15.22.040)	X				X
Notice of application (see ECC 15.22.040)	X		X, except for Type I projects		X
SEPA determination (see ECC Chapter 15.27)		X	X	X	X
Notice of open record predecision hearing, if applicable	X		X		X
Notice of decision (see ECC 15.22.080)	X		X		X
Notice of appeal hearing, if applicable	X		X		X

15.21.050 Projects under permit review process types. (NEW)

A. Review Process Type I. Table 15.21.050(A) below identifies the types of projects and permits that require a Type I review process. Any decision-making, procedural, or noticing variations to the Type I review process are described in the middle column. The right column identifies code sections applicable to the project/permit.

Table 15.21.050(A) Projects under Type I review process. Where superscript numbers are included in a cell, please reference the applicable number under “Notes/conditions” below the table.

Type I Project ¹	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Administrative decision	No variation	15.13.010(D)
Permitted use	No variation	Chapter 15.31
Commercial wireless communication support towers, antenna arrays and facilities in residential zones	No variation	15.34.080
Boundary line adjustments	No variation	Chapter 15.26
Final formal subdivision approval	Final decision by City Council; See 15.26.100(C)	Chapter 15.26
Final short subdivision approval	See 15.26.100(B)	Chapter 15.26
Minor changes to approved preliminary subdivision	No variation	15.26.080
Binding site plan	No variation	15.26.150
Non-conforming use determination	No variation	Chapter 15.24
Critical area allowed activity	No variation	Article 6
Critical area final determination	No variation	Article 6
Site development permit	No variation	15.26.090
Small wind energy system (one per parcel) ²	No variation	15.34.070
Home occupation	No variation	ECC 15.34.020

Notes/conditions:

1. If any Type I project requires a SEPA threshold determination it automatically becomes a Type II project.
2. Where more than one small wind energy system is proposed for a parcel, then a conditional use permit is required.

B. Review Process Type II. Table 15.21.050(B) below identifies the types of projects and permits that require a Type II review process. Any decision-making, procedural, or noticing variations to the Type II review process are described in the middle column. The right column identifies code sections applicable to the project/permit.

Table 15.21.050(B) Projects under Type II review process. Where superscript numbers are included in a cell, please reference the applicable number under “Notes/conditions” below the table.

Type II Project	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Code interpretation	No variation	15.11.060(E)
Temporary use	No variation	15.25.010
Minor project design review	No variation	15.25.030 Article 5, Project Design
Minor project design review with departure(s) request	No variation	15.25.030 Article 5, Project Design
Major project design review	Recommendation by landmarks & design commission at a public meeting (see ECC 15.13.160)	15.25.030 Article 5, Project Design
Commercial wireless communication support towers, antenna arrays and facilities in commercial and industrial zones	Recommendation by landmarks & design commission at a public meeting (see ECC 15.13.160)	15.34.080
Signs – minor project	No variation	15.25.030 Chapter 15.56
Signs – major project or landmark district	Recommendation by landmarks & design commission at a public meeting (see ECC 15.13.160)	15.25.030 Chapter 15.56
Landmark certificate of approval (COA)	Landmarks and design commission recommendation after public meeting; decision by director; Appeal open record to hearing examiner	15.28.090
Landmark register listing	Landmarks and design commission recommendation after public meeting; decision by director; Appeal open record to city council	15.28.080

Type II Project	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Landmark register demolition	Landmarks and design commission recommendation after public meeting; decision by director; Appeal open record to city council	15.28.090
Sidewalk food & beverage use permit	Appeal to city council – open record	ECC 4.14.170
Short subdivision, preliminary	No variation	Chapter 15.26 Article 4
Critical area initial determination	No variation	Article 6
Critical area exemption	No variation	Article 6
Impact fees	See Title 14	ECC Title 14
Park land dedication and/or development	Recommendation by the parks and recreation commission at a public meeting (see ECC 15.13.160)	15.41.040
Adult entertainment license	Final decision by city clerk	15.34.010
SEPA DNS/MDNS	Appeal combined with underlying permit decision	Chapter 15.27
SEPA DS	Appeal directly to city council when DS issued. No further review of underlying permit until SEPA appeal decided.	Chapter 15.27
Development agreements	No variation	

C. Review Process Type III. Table 15.21.050(C) below identifies the types of projects and permits that require a Type III review process. Any decision-making, procedural, or noticing variations to the Type III review process are described in the middle column. The right column identifies code sections applicable to the project/permit.

Table 15.21.050(C) Projects under Type III review process. Where superscript numbers are included in a cell, please reference the applicable number under “Notes/conditions” below the table.

Type III Project	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Conditional use permit	Hearing Examiner decision after open record hearing; Appeal closed to City Council	15.25.040
Variance	Hearing examiner decision after open record hearing; Appeal closed to planning commission	15.25.050
Critical area exception for public agency or reasonable use	No variation Decision is by City Council after open record public hearing.	Article 6

D. Review Process Type IV. Table 15.21.050(D) below identifies the types of projects and permits that require a Type IV review process. Any decision-making, procedural, or noticing variations to the Type IV review process are described in the middle column. The right column identifies code sections applicable to the project/permit.

Table 15.21.050(D) Projects under Type IV review process. Where superscript numbers are included in a cell, please reference the applicable number under “Notes/conditions” below the table.

Type IV Project	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Preliminary subdivision	Hearing examiner recommendation to city council after open record hearing; City council decision after closed hearing record	Chapter 15.26
Master site plan for regional retail commercial projects	Landmarks and design commission recommendation at a public meeting (see ECC 15.13.160 and 15.25.060)	15.25.070 Chapter 15.35
Site specific rezone	Planning commission recommendation; Hearing examiner decision after open record hearing; Appeal closed to city council	15.25.060 Chapter 15.30

E. Review Process Type V. Table 15.21.050(E) below identifies the types of projects and permits that require a Type V review process. Any decision-making, procedural, or noticing variations to the Type V review process are described in the middle column. The right column identifies code sections applicable to the project/permit.

Table 15.21.050(E) Projects under Type V review process. Where superscript numbers are included in a cell, please reference the applicable number under “Notes/conditions” below the table.

Type V Project	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Rezone (other than site specific)	No variation	15.25.060 and Chapter 15.30
Land development code amendment	See 15.25.090	15.25.090
Comprehensive plan amendment	See 15.25.080	15.25.080
Annexations	No variation	Chapter 15.37
Essential public facilities	See 15.25.100	15.25.100; RCW 36.70A.200; and Chapter 11 of the comprehensive plan

15.22 Permit Review Procedures

15.22.010 Pre-application meeting. (NEW)

A pre-application meeting is required prior to submitting an application for any Type III or IV project, **major design review project (Type II review)**, and for an application for a project located within a critical area or its buffer, pursuant to ECC Article 6.

Applicants for other development permits are encouraged to participate in pre-application meetings with the city. Pre-application meetings with staff provide an opportunity to discuss the proposal in general terms, identify the applicable city requirements and the project review process including the permits required by the action, timing of the permits and the approval process.

The director shall specify submittal requirements for pre-application meetings, which shall include a critical areas information form if critical areas are involved with the project. Plans presented at the pre-application meeting are nonbinding and do not “vest” an application.

15.22.020 Application. (NEW)

A. Designated applicant. Each applicant submitting a project permit to the city shall designate a single person or entity to receive determinations and notices under this title. The applicant shall include the name, current address and current telephone number of the

designated person or entity. The applicant shall be responsible for immediately notifying the city of any change of name, address or telephone number of the designated person or entity.

B. Submittal requirements.

1. The city shall specify submittal requirements for each type of permit application necessary to ensure compliance with the applicable standards. This includes applicant information, details about the proposal, and the number of application copies. The city, at its sole discretion, may waive specific submittal requirements which it determines to be unnecessary for review of an application. Applicants may obtain application materials from the city.
2. The city may require additional material from applicants, including, but not limited to, maps, studies or models when the city determines such material(s) is needed to adequately assess the proposed project.
3. Applicants seeking approval of permits must complete an application form furnished by the city and comply with any requirements set forth in applicable city ordinances and any referenced design manuals.

C. Expiration. Absent statute or ordinance provisions to the contrary, any application for which a determination of completeness has been issued and for which no substantial steps have been taken to meet permit approval requirements for a period of one year after issuance of the determination of completeness will expire and become null and void. The director may grant a one-year extension on a one-time basis where the applicant can demonstrate extraordinary circumstances or conditions which were not caused by the applicant or were unknown or unforeseeable at the time of the original application.

15.22.030 Determination of completeness. (updating 1.68.120)

A. Criteria. An application shall be determined complete when all information required in specified submittal requirements for the application has been provided, and is sufficient for processing the application, even though additional information, as determined by the director, may be required. The city may, at its discretion and at the applicant's expense, retain a qualified professional to review and confirm the applicant's reports, studies and plans. Prior to such retention, the city shall provide notice to the applicant of its intention to retain such qualified professional.

B. Written determination. Within 28 calendar days of receiving a permit application for Type II, III, or IV projects, the city shall mail a written determination to the applicant stating whether the application is complete, or incomplete and specifying what is necessary to make the application complete. If the department fails to provide a determination of completeness or to request additional information, the application shall be deemed complete on the 29th calendar day after submittal.

C. Information request and timeline. If the applicant fails to provide the required information within 90 days of the date of the written notice that the application is incomplete, or after a request for additional information is made, the application shall be deemed null and void.

The director may grant a 90-day extension on a one-time basis where the applicant can demonstrate extraordinary circumstances or conditions which were not caused by the applicant were unknown or unforeseeable at the time of the original application. The applicant may request a refund of the application fee minus the city's cost of processing. (NOTE – NEED A PROCESS FOR REFUNDS)

D. Additional information request. The determination of completeness shall not preclude the city from requesting additional information or studies if new information is required or substantial changes are made to the proposed action.

15.22.040 Public notices of application. (NEW)

A. Issue notice. Within 14 calendar days of the determination of completeness, the city shall issue a notice of complete application for all Type II, III, and IV projects. Notice of any SEPA pre-threshold determination comment opportunities available pursuant to ECC Chapter 15.27 shall be combined with the notice of complete application.

B. Notice contents. The notice of complete application shall include the following information:

1. The dates of application, determination of completeness, and the date of the notice of application;
2. The name of the applicant;
3. The location and description of the project;
4. The requested actions and/or required studies;
5. The date, time, and place of an open record hearing, if one has been scheduled;
6. Identification of environmental documents, if any;
7. A statement of the public comment period (if any), not less than 14 days nor more than 30 days; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision (once made) and any appeal rights;
8. The city staff project manager and phone number;
9. Identification of the development regulations used in determining consistency of the project with the comprehensive plan; and
10. Any other information that the city determines to be appropriate.

C. Public notification. The notice of complete application shall be made available to the public, through the following methods:

1. Mail. The department shall mail to owners of real property located within 300 feet of the subject property;
2. Post site. The applicant for site specific proposals requiring a Type III or IV process and/or requiring SEPA review pursuant to ECC Chapter 15.27, shall post a notice board

on the site per the requirements set forth in ECC 15.22.050 below and ECC 15.27.120;
and

3. Newspaper. The department shall publish a notice of the application in the newspaper of general circulation for the general area in which the proposal is located. This notice shall include the project location and description, the type of permit(s) required, comment period dates, and the location where the complete application may be reviewed.

D. Public comments. The department must receive all comments received on the notice of application by 5:00 p.m. on the last day of the comment period. Comments may be mailed, emailed, faxed, or personally delivered.

15.22.050 Notice board requirements. (NEW)

Posted notice for a proposal as required in ECC 15.22.040(C)(2) above shall consist of one or more notice boards posted by the applicant within 14 days following the department's determination of completeness as follows:

- A. Notice board. The department shall provide the applicant with a reduced paper copy of the required notice which the applicant shall be responsible for enlarging to a 6-square foot waterproof sign for posting;
- B. Number of boards. A single notice board shall be posted for a project. This notice board may also be used for the posting of the notice of decision and notice of hearing. Additional notice boards may be required by the department when:
 1. The site does not abut a public road;
 2. A large site abuts more than one public road; or
 3. The department determines that additional notice boards are necessary to provide adequate public notice;
- C. Location of the notice board. The notice board shall be located:
 1. At the midpoint of the site street frontage or as otherwise directed by the department for maximum visibility;
 2. 5 feet inside the street property line except when the board is structurally attached to an existing building; provided, that no notice board shall be placed more than 5 feet from the street property without approval of the department;
 3. So that the top of the notice board is between 7 to 9 feet above grade; and
 4. Where it is completely visible to pedestrians.
- D. Notice boards shall be:
 1. Maintained in good condition by the applicant during the notice period through the time of the final city decision on the proposal, including the expiration of any applicable appeal periods, and for decisions that are appealed, through the time of the final resolution of any appeal;

2. In place at least 28 days prior to the date of any required hearing for a Type III or IV project, or at least 14 days following the department's determination of completeness for any Type II project; and
 3. Removed within 14 days after the a final decision has been made on the project or after the end of the open record public hearing; and
 4. Removal of the notice board prior to the required time in subsection 3 above may be cause for discontinuance of city review until the notice board is replaced and remains in place for the specified time period.
- E. An affidavit of posting shall be submitted to the department by the applicant within 14 days following the department's determination of completeness to allow continued processing of the application by the department.

15.22.060 Optional consolidated permit process. (1.68.080)

The applicant for a development permit from the city may request that one open record public hearing be held between the city and any other public agency with jurisdiction. The intention of such combined public hearing would be to supply the different public agencies with the same public record for their separate review and decision-making process.

Such request for a combined public hearing shall be subject to mutual agreement between the applicant and the city as to the timing of the public hearing and the expense related to compiling the record required by the various public agencies involved.

15.22.070 Permit processing time limits. (1.68.240)

- A. Decisions on Type I, II, III, or IV projects shall be made within 120 days from the date of a determination that the application is complete. Exceptions to this 120-day time limit are:
1. Substantial project revisions made or requested by an applicant, in which case the 120 days will be calculated from the time that the city determines the revised application to be complete;
 2. The time required to prepare and issue a draft and final Environmental Impact Statement (EIS) in accordance with the State Environmental Policy Act;
 3. Any period for administrative appeals of project permits;
 4. An extension of time mutually agreed upon in writing by the department and the applicant; or
 5. Amendments to the comprehensive plan or LDC.
- B. The time limits set for Type I, II, III, or IV projects do not include:
1. Any period of time during which the applicant has been requested in writing by the department to correct plans, perform studies or provide additional information. This period of time shall be calculated from the date the department notifies the applicant of the need for additional information, until the date the department determines that the

additional information satisfies the request for such information or 14 days after the date the information has been provided to the department, whichever is earlier.

2. If the department determines that the additional information submitted to the department by the applicant under paragraph (1) above is insufficient, the department shall notify the applicant of the deficiencies in writing, and the procedures provided in paragraph (1) above shall apply as if a new request has been made.
- C. If the department is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limit has not been met and an estimated date for issuance of the notice of decision.

15.22.080 Public notice of decision. (NEW)

For Type II, III, and IV projects, the director shall issue and mail a notice of decision to the parties of record and to any person who, prior to the rendering of the decision, requested notice of the decision in writing. The notice of decision may be a copy of the final report, and must include the threshold determination, if the project was not categorically exempt from SEPA and any critical area determination, if applicable. The notice of decision will be posted and published in the newspaper of general circulation for the general area in which the proposal is located.

15.22.090 Expiration of vested status of land use permits and approvals. (NEW)

Except for subdivisions and regional retail commercial master site plans or where a different duration of approval is indicated in this code, vested status of an approved land use permit under Type I, II, III, and IV projects shall expire 2 years from the date of the city's final decision, unless a complete site development permit or building permit application is filed before the end of the 2-year term. Land use permits that do not require subsequent site development permit or building permit are exempt from this provision. In the event of an administrative or judicial appeal, the 2-year term shall not expire. Continuance of the 2-year period may be reinstated upon resolution of the appeal.

If a complete site development or building permit application is filed before the end of the 2-year term, the vested status of the permit shall be automatically extended for the time period during which the building permit application is pending prior to issuance; provided, that if the site development or building permit application expires or is canceled, the vested status of the permit or approval under Type I, II, III, and IV projects shall also expire or be canceled. If a site development or building permit is issued and subsequently renewed, the vested status of the subject permit or approval under Type I, II, III and IV projects shall be automatically extended for the period of the renewal.

15.22.100 Permit expiration timelines for clearing, grading & fill, and site development permits. (NEW)

A site development permit may be issued approving land clearing, grading, fill, and/infrastructure improvements required in conjunction with the development of a site. The expiration limitations of this permit are as follows:

- A. Site development permit – Permit expiration.** Site development permits shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Site development permits associated with subdivision applications shall expire when the preliminary subdivision approval has expired as set forth by RCW 58.17.140.
- B. Site development permit – Permit extension.** The director is authorized to grant a 180-day extension on a one-time basis where the applicant can demonstrate extraordinary circumstances or conditions which were not caused by the applicant or were unknown or unforeseeable at the time of the original application. Extensions may be granted for those permits issued in conjunction with a preliminary subdivision approval that has been extended as provided in RCW 58.17.140.

Also see review and decision criteria for site development permits in ECC 15.25.020

15.23 General Provisions for Land Use Hearings & Appeals

15.23.010 Limitations on the number of hearings. (1.68.200 and 13.56)

No more than one open record hearing shall be heard on any land use application. The appeal hearing on a SEPA threshold determination of nonsignificance shall be consolidated with any open record hearing on the project permit.

15.23.020 Public notice of public hearing. (13.56)

Notice of the time and place of an open record hearing shall be made available to the public by the department no less than 14 days prior to the hearing, through use of these methods:

- A. Mail. Mailing to owners of real property located within 300 feet of the subject property;
- B. Newspaper. The department shall publish a notice of the open record public hearing in the newspaper of general circulation for the general area in which the proposal is located; and
- C. Post site. Posting the property (for site-specific proposals).

15.23.030 Effective date of decision. (13.56)

Unless an administrative appeal is timely filed, a land use decision of the city shall be effective on the date the written decision is issued.

15.23.040 General description of appeals. (13.63)

- A. Type II projects are appealable to the hearing examiner who conducts an open record appeal hearing.
- B. Type III projects are appealable to the hearing examiner who conducts closed record appeal hearing.
- C. Appeals of city council decisions (Type IV and V projects), ministerial decisions (Type I) without an administrative appeal, and appeals of an appeal authority's decisions shall be made to the Superior Court or to the Growth Management Hearings Board, as applicable to the matter being appealed.

15.23.050 Grounds for administrative appeal. (13.63)

Any appeal to Type II and III review process decisions shall be linked to the criteria of the underlying land use decision. The grounds for filing an appeal shall be limited to the following:

- A. The director exceeded his or her jurisdiction or authority;
- B. The director failed to follow applicable procedures in reaching the decision;
- C. The director committed an error of law; or
- D. The findings, conclusions or decision prepared by the director or review authority are not supported by substantial evidence.

15.23.060 Filing administrative appeals. (13.63)

- A. Appeals to Type II, III, and IV review process decisions shall be filed no more than 14 calendar days after the date of the receipt of the mailing of the decision. A decision shall be deemed received 3 days from date of mailing. Appeals shall be filed in writing with the city clerk and shall include the appropriate appeal fee.
- B. Within 10 calendar days following timely filing of a complete appeal with the city clerk, notice of the date, time, and place for the open record hearing shall be mailed by the city clerk to all parties of record.

15.23.070 Appeal process. (13.63)

- A. An appeal shall be heard and decided within 90 days from the date the appeal is filed.
- B. Timely filing of an appeal shall delay the effective date of the reviewing authority's decision until the appeal is ruled upon or withdrawn.
- C. The hearing shall be limited to the issues included in the written appeal statement. Participation in the appeal shall be limited to the city, including all staff, the applicant for the proposal subject to appeal, and those persons or entities which have timely filed complete written appeal statements and paid the appeal fee.
- D. Decision on appeal. Upon hearing an appeal, the appellate body can rule to deny the appeal, rule to uphold the appeal, or rule to return the matter to the decision-maker to reconsider the decision.

15.23.080 Judicial review. (NEW)

No person may seek judicial review of any decision of the city, unless that person first exhausts the administrative remedies provided by the city.

15.23.090 Judicial appeals. (NEW)

Any judicial appeal shall be filed in accordance with state law. If there is not a statutory time limit for filing a judicial appeal, the appeal shall be filed within 21 calendar days after a final decision is issued by the city.

15.23.100 Conflicts. (NEW)

In the event of any conflict between any provision of this chapter and any other city ordinance, the provisions of this chapter shall control. Specifically, but without limitation, this means that the provisions of this chapter shall control with reference to authority to make decisions and the timeframe for making those decisions, including the requirements to file an appeal.

15.23.110 Dismissals. (NEW)

The appeal authority may dismiss an appeal in whole or in part without a hearing, if the appeal authority determines that the appeal or application is untimely, frivolous, beyond the scope of the appeal authority's jurisdiction, brought merely to secure a delay, or that the appellant lacks standing.

15.24 Nonconformance (13.46)

15.24.010 Purpose. (13.46.020)

- A. Establish the legal status of a nonconformance by creating provisions through which a nonconformance may be maintained, altered, reconstructed, expanded or terminated;
- B. Encourage the eventual replacement of nonconforming uses having potentially undesirable impacts on conforming uses;
- C. Provide for the temporary establishment of uses that are not otherwise permitted in a zone and to regulate such uses by their scope and period of use; and
- D. Encourage the adaptive re-use of existing public facilities, which will continue to serve the community, and to ensure public review of redevelopment plans by allowing:
 - 1. Temporary re-uses of closed public school facilities retained in school district ownership, and the reconversion of a temporary re-use back to a school use;
 - 2. Permanent re-use of surplus nonresidential facilities (e.g., schools, fire stations, government facilities) not retained in school district ownership; or
 - 3. Permanent re-use of historic structures listed on the National Register or designated as city landmarks by the city historian and accepted by the city council.

15.24.020 Applicability. (NEW)

Any use, structure, lot or other site improvement (e.g., landscaping or signage), which was legally established prior to the effective date of a land use regulation that rendered it nonconforming, shall be considered nonconforming if:

- A. The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or
- B. The use or structure does not comply with the development standards or other requirements of this code;

A change in the required permit review process shall not create a nonconformance.

15.24.030 Benign and detrimental nonconformities. (NEW)

The provisions of this chapter often distinguish benign nonconformities from detrimental nonconformities based on the differing levels of impacts that the various types of nonconformities may cause to surrounding uses that conform to the LDC.

- A. Benign nonconformity.** A nonconformity that does not have a negative impact on the health and safety of the public but may have an impact on public welfare. Examples may include not enough landscaping, too few parking spaces, or minimal deviation from dimensional standards.
- B. Detrimental nonconformity.** A nonconformity that has a negative impact on the health and safety of the public. Examples include uses involving hazardous materials, such as gasoline, in single family neighborhoods, uses that produce significant noise, such as body shops or paint shops, uses that have been deemed incompatible, such as adult entertainment establishments near schools, or uses that have large trip generation characteristics such as drive through restaurants.

The director shall make a written determination as to whether a nonconformity is benign or detrimental and include the rationale for such determination.

15.24.040 Nonconforming use. (NEW)

- A. Expansion of nonconforming uses.** No existing building, structure, or land devoted to a nonconforming use shall be expanded, enlarged, extended, reconstructed, intensified, or structurally altered unless the use thereof is changed to a use permitted in the district in which such building, structure, or land is located except as follows: When authorized by conditional use permit, a benign nonconforming use may be expanded, enlarged, extended, reconstructed, intensified, or structurally altered.
- B. Change of nonconforming use.** When authorized by the director, a nonconforming use may be changed to a similar use that does not increase the intensity of impacts on surrounding conforming uses. For example, a change from a benign non-residential use in a residential zone to another benign use shall be acceptable.

- C. Extension of nonconforming use.** When authorized by the director, a benign nonconforming use may be extended throughout those parts of a building which were manifestly designed or arranged for such use prior to the date when such use of such building became nonconforming, if no structural alterations except those required by law are made therein.
- D. Discontinuance of nonconforming use.** When a detrimental nonconforming use of land or a nonconforming use of all or part of a structure is discontinued or abandoned for a period of 6 months, such use shall not be resumed, notwithstanding any reserved intent not to abandon such use. Normal seasonal cessation of use, or temporary discontinuance for purposes of maintenance or improvements, shall not be included in determination of the 6 month period of discontinuance. Evidence that such use has been actively available and marketed for sale or lease shall be considered by the director in determining if a nonconforming use has been discontinued.
- E. Reversion to nonconforming use.** If a nonconforming use is changed to a permitted use, the nonconforming use shall not be resumed.
- F. Residential exception to nonconforming use status.** Legally established residential uses located in any zoning district shall not be deemed nonconforming in terms of use and density provisions and shall be a legal use.

15.24.050 Nonconforming structure. (NEW)

- A. Detrimental nonconforming buildings and structures.** No detrimental nonconforming structure may be expanded, enlarged, extended, reconstructed, or structurally altered or changed, nor may any major nonconforming building, structure, or lot be occupied after discontinuance or change in use, unless the structure, use, and associated grounds and development are brought into compliance with use and minimum development standards of the district in which such structure is located, except as follows:
 1. Any detrimental nonconforming structure damaged by fire, flood, explosion, wind, earthquake, war, riot, or other natural disaster, may be restored, reconstructed, and used as before within the same building footprint; provided, that the work be vested by permit application within one year of such happening; any restoration or reconstruction not vested by permit application within 12 months from the date of the fire or other casualty shall be deemed abandoned and not allowed to be restored.
 2. Such repairs and maintenance work as required to keep the structure in sound condition may be made to a detrimental nonconforming structure, provided no such structural alterations shall be made except such as are required by law or ordinance or authorized by the director.
- B. Benign nonconforming buildings and structures.** No benign nonconforming structure may be expanded, enlarged, or extended where they increase an existing nonconformity. Benign nonconforming buildings may be repaired, maintained and rebuilt provided such work does not increase an existing nonconformity.

15.24.060 Nonconforming lots. (NEW)

- A. Residential zones.** In any residential zone, and in nonresidential zones where single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected or modified on any nonconforming lot of record, even though such lot fails to meet lot area and width requirements of the zone in which such lot is located; provided that:
1. Such lot is in separate ownership; and
 2. The proposed development meets other applicable development standards such as setbacks and building height.
- B. Other districts.** In any other district, permitted building and structures may be constructed on a nonconforming lot of record, provided applicable development standards such as setbacks, landscaping, and off-street parking requirements are met.

15.25 Review and Decision Criteria

15.25.010 Temporary use permits – Type II review process. (Chapter 6.64)

- A. Purpose.** A temporary use permit is a mechanism by which the city may permit a use to locate within the city (on private property or on the public rights-of-way) on an interim basis, without requiring full compliance with the LDC or by which the city may permit seasonal or transient uses not otherwise permitted.
- B. Procedures.** Temporary uses are subject to the Type II review process as set forth in Chapter 15.21.
- C. Decision criteria.** The director may approve or modify and approve an application for a temporary use permit if:
1. The temporary use will not be materially detrimental to public health, safety, or welfare, nor injurious to property and improvements in the immediate vicinity of the subject temporary use;
 2. The temporary use is not incompatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use;
 3. Adequate parking is provided for the temporary use and, if applicable, the temporary use does not create a parking shortage for the existing uses on the site; and
 4. Hours of operation of the temporary use are specified; and
 5. The temporary use will not create noise, light, or glare which would adversely impact surrounding uses and properties.
- D. Time period.** A temporary use permit is valid for up to 60 calendar days from the effective date of the permit, except that the director may establish a shorter time frame or extend a temporary use permit for up to one year.

15.25.020 Site development permits – Type I or II review process. (NEW)

A. Purpose. The purpose of a site development permit is to provide a mechanism to review activities that involve clearing and removal of vegetation, excavation, grading, and earthwork construction that may or may not be in preparation of site development within the city in order to protect public health, safety, and welfare by:

1. Minimizing adverse stormwater impacts generated by the removal of vegetation and alteration of landforms;
2. Protecting water quality from the adverse impacts associated with erosion and sedimentation;
3. Minimizing aquatic and terrestrial wildlife habitat loss caused by the removal of vegetation;
4. Protecting sensitive areas from adverse clearing and grading activities;
5. Preventing damage to property and harm to persons caused by excavations and fills;
6. Establishing administrative procedures for the issuance of permits, approval of plans, and inspection of clearing and grading operations; and
7. Providing penalties for the violation of this section.

B. Applicability. A site development permit is required for the following activities or as determined by the director:

1. The construction of 2 or more detached single-family dwelling units on a single parcel;
2. Site improvements associated with short and formal subdivisions (also see ECC 15.26.080);
3. The construction of 2 or more nonresidential or multifamily structures on a single parcel; or
4. Clearing, grading, or fill activities, except those exempt activities specified in subsection (C) below.

C. Exemptions. The following activities are exempt from site development permit requirements herein:

1. An on-site excavation or fill for basements and footings of a building, retaining wall, parking lot, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure;
2. Maintenance of existing driveways or private access roads within their existing road prisms; provided, that the performance and restoration requirements of this chapter are met and best management practices are utilized to protect water quality;
3. Any grading within a publicly owned road right-of-way, provided this does not include clearing or grading that expands further into a critical area or buffer;

4. Clearing, grading or fill by a public agency for the following routine maintenance activities:
 - a. Roadside ditch cleaning, provided the ditch does not contain salmonids;
 - b. Pavement maintenance;
 - c. Normal grading of gravel shoulders;
 - d. Maintenance of culverts;
 - e. Maintenance of flood control or other approved surface water management facilities; and/or
 - f. Routine clearing within road right-of-way;
5. Cemetery graves; provided, that this exception does not apply except for routine maintenance if the clearing or grading is within a critical area as regulated in Article 6 (CAO) ECC;
6. Minor stream restoration projects for fish habitat enhancement by a public agency, utility, or tribe within a critical area as regulated in Article 6 (CAO) ECC;
7. Any clearing, grading or fill that has been approved by the director as part of a commercial site development permit and for which a financial guarantee has been posted;
8. The following activities are exempt from the clearing, grading and fill requirements of this chapter and no permit shall be required, subject to the limitations in critical areas and their buffers as set out in Article 6 (CAO) ECC:
 - a. Normal and routine maintenance of existing lawns and landscaping, including up to 50 cubic yards of top soil, mulch, or bark materials added to existing landscaped areas;
 - b. Emergency tree removal to prevent imminent danger or hazard to persons or property;
 - c. Normal and routine horticultural activities associated with commercial orchards, nurseries, or Christmas tree farms. This does not include clearing, grading or in order to develop or expand such activities;
 - d. Normal and routine maintenance of existing public park properties and private and public golf courses. This does not include clearing, grading or fill in order to develop or expand such activities in critical areas;
 - e. Removal of noxious weeds from steep slope hazard areas and the buffers of streams and wetlands;
 - f. Pruning and limbing of vegetation for maintenance of above-ground electrical and telecommunication facilities; provided, that the clearing is consistent with the electric, natural gas, cable communication and telephone utility exemption in critical areas as regulated in Article 6 (CAO) ECC;
9. The cutting and removal of any coniferous tree of less than 8 inches DBH or any deciduous tree of less than 12 inches DBH when not located within a critical area or buffer;

10. The pruning, limbing, and general maintenance of trees outside of environmentally critical areas and buffers, consistent with the requirements of Article 6 (CAO) ECC;
11. The pruning, limbing, and general maintenance of trees in buffers or that are otherwise required to be retained pursuant to Article 6 (CAO) ECC;
12. An excavation that is less than 2 feet in depth or does not create a cut slope greater than 5 feet in height and steeper than one unit vertical in 2 units horizontal (66.7 percent slope), that does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course, excluding work in critical areas and their buffers;
13. A fill less than one foot in depth and placed on natural terrain with a slope flatter than one unit vertical in 5 units horizontal (20 percent slope), or less than 3 feet in depth, not intended to support structures, that does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course, excluding work in critical areas and their buffers; and
14. Normal routine maintenance of existing single-family drainage systems, including but not limited to excavation to replace existing pipes, catch basins and infiltration trenches, that does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course, excluding work in critical areas and their buffers.

D. Procedures. Site development permits are subject to the Type I review process, except where such projects require a SEPA threshold determination, a Type II review process is required (see Chapter 15.21 for review process details).

E. Operating conditions and standards of performance.

1. Any activity that will clear, grade, fill or otherwise disturb the site, whether requiring a clearing, grading, or fill permit or not, shall provide erosion and sediment control (ESC) that prevents, to the maximum extent possible, the transport of sediment from the site to drainage facilities, water resources, and adjacent properties. Erosion and sediment controls shall be applied as specified by the temporary ESC measures and performance criteria and implementation requirements in the city's erosion and sediment control standards.
2. Cuts and fills shall conform to the following provisions unless otherwise approved by the director:
 - a. Slope. No slope of cut and fill surfaces shall be steeper than is safe for the intended use and shall not exceed 2 horizontal to one vertical, unless otherwise approved by the director.
 - b. Erosion control. All disturbed areas including faces of cuts and fill slopes shall be prepared and maintained to control erosion in compliance with subsection (1) of this section.
 - c. Preparation of ground. The ground surface shall be prepared to receive fill by removing unsuitable material such as concrete slabs, tree stumps, brush, and car bodies.
 - d. Fill material. Except in an approved sanitary landfill, only earth materials that have no rock or similar irreducible material with a maximum dimension greater than 18 inches shall be used.

- e. Drainage. Provisions shall be made to:
 - i. Prevent any surface water or seepage from damaging the cut face of any excavations or the sloping face of a fill;
 - ii. Carry any surface waters that are or might be concentrated as a result of a fill or excavation to a natural watercourse, or by other means approved by the city engineer.
- f. Bench/Terrace. Benches, if required, at least 10 feet in width shall be back-sloped and shall be established at not more than 25 feet vertical intervals to control surface drainage and debris. Swales or ditches on benches shall have a maximum gradient of 5 percent.
- g. Access roads – Maintenance. Access roads to grading sites shall be maintained and located to the satisfaction of the city engineer to minimize problems of dust, mud, and traffic circulation.
- h. Access roads – Gate. Access roads to grading sites shall be controlled by a gate when required by the director.
- i. Warning signs. Signs warning of hazardous conditions, if such exist, shall be affixed at locations as required by the director.
- j. Fencing. Fencing, where required by the director, to protect life, limb, and property, shall be installed with lockable gates that must be closed and locked when not working the site. The fence must be no less than 5 feet in height and the fence material shall have no horizontal opening larger than 2 inches.
- k. Setbacks. The tops and the toes of cut and fill slopes shall be set back from property boundaries and from structures as far as necessary for safety of the adjacent properties and structures and to prevent damage resulting from water runoff or erosion of the slopes.

Slopes and setbacks shall be determined by the director.
- l. Hours of operation. Hours of operation, unless otherwise authorized by the director, shall be between 7:00 a.m. and 7:00 p.m.

F. Decision criteria. A site development permit that complies with all applicable development regulations and requirements for construction shall be approved.

15.25.030 Design review – Type II review process. (Chapter 1.45)

A. Purpose.

1. To promote the public health, safety, and general welfare of the citizens of the city;
2. To recognize that land use regulations aimed at the orderliness of community growth, the protection and enhancement of property values, the minimization of discordant and unsightly surroundings, the avoidance of inappropriateness and poor quality of design and other environmental and aesthetic objectives provide not only for the health, safety and general welfare of the citizens, but also for their comfort and prosperity and the beauty and balance of the community, and as such, are the proper and necessary concerns of local government;
3. To increase awareness of design considerations among the citizens of Ellensburg; and

4. To create a review process that balances flexibility and predictability for applicants, staff, public officials, and community members.

B. Definition of minor and major project design review.

Both major and minor design review projects are reviewed for conformance with applicable land use and zoning provisions in Article 3, applicable community design provisions in Article 4, and applicable project design provisions in Article 5, plus other applicable provisions set forth in the LDC. Due to their size, major design review projects require additional review, as set forth in subsection (D) of this section below.

1. Major design review project includes one or more of the following:
 - a. The construction of any new nonresidential building with a gross floor area of 15,000 square feet or more;
 - b. The construction of any new residential building which contains 10 or more living units; or
 - c. All construction activity requiring a building permit which will result in any new structure or alter the exterior appearance of an existing building that is on the landmarks register as established in ECC 15.30.080;
2. Minor design review project. Includes all construction activity requiring a building permit or sign permit that does not meet the criteria for a major design review project as defined in paragraph (1) above.
3. Exceptions. All activities involving the exterior modification of any property that is on the landmarks register must undergo formal design review as set forth in ECC 15.28.090. The director, however, shall have the authority to determine if a minor exterior modification to a non-landmark register property is not significant, and therefore does not require formal design review, based on factors such as the scope, location, context and visibility of the change or modification. The director may determine that formal design review is not required for such minor exterior modifications including, but not limited to: repainting structures to similar colors; relocating, modifying or adding mechanical equipment; reorganization of portions of parking lots involving less than 5 spaces; modifications to locations of existing lighting; or minor changes to existing approved landscaping. There shall be a rebuttable presumption of nonsignificance, and therefore no requirement of a formal design review, if all of the following conditions are met:
 - a. The cost of the work does not exceed 15 percent of the structure's current Kittitas County assessed value as of the time the initial application for the work is submitted;
 - b. There is no additional structure or parking lot, or any enlargement of or addition to an existing structure or parking lot;
 - c. The work does not result in a reduction in the landscaped area;
 - d. The work does not remove or diminish an existing perimeter landscape screen area;
 - e. The work does not include new or additional service or mechanicals areas; and,

- f. The work does not include additional exterior lighting or a new or enlarged exterior sign.

If there is no current Kittitas County assessed value for a structure, a current appraisal of the structure, which shall be provided by the applicant and acceptable to the director, shall be used as the value point of reference for the structure.

C. Procedures. Minor and major design review projects are subject to the Type II review process as set forth in Chapter 15.21, except that major design review projects and minor design review projects which include one or more departure requests require a review and recommendation by the landmarks and design commission at a public meeting as defined in ECC 15.13.160.

D. Decision criteria. Decision criteria for minor and major design review projects are set forth in Articles 3-5 of this title.

15.25.040 Conditional use permits – Type III review process. (Chapter 13.50)

A. Purpose. The purpose of a conditional use permit is to locate a permitted use on a particular property, subject to conditions placed on the permitted use to ensure compatibility with nearby land uses.

B. Procedures. Conditional use permits are subject to the Type III review process as set forth in Chapter 15.21.

C. Decision criteria. A conditional use permit shall be granted by the city, only if the applicant demonstrates that:

1. The conditional use is compatible with the comprehensive plan and designed in a manner which is compatible with the character and appearance with the existing or proposed development in the vicinity of the subject property;
2. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
3. The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;
4. The conditional use is not in conflict with the health and safety of the community;
5. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood; and
6. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities.

15.25.050 Variances – Type III review process. (Chapter 13.48)

- A. Purpose.** A variance is a mechanism by which the city may grant relief from the zoning provisions and standards of the LDC, where practical difficulty renders compliance with the LDC an unnecessary hardship.
- B. Procedures.** Variance permits are subject to the Type III review process as set forth in Chapter 15.21.
- C. Decision criteria.** A variance shall be granted by the city, only if the applicant demonstrates all of the following:
1. The variance is necessary because of the unique size, shape, topography, or location of the subject property;
 2. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;
 3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;
 4. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;
 5. The variance is compatible with the comprehensive plan;
 6. The variance does not create a health or safety hazard;
 7. The granting of the variance will not be materially detrimental to the public welfare or injurious to:
 - a. The property or improvements in the vicinity, or
 - b. The zone in which the subject property is located;
 8. The variance does not relieve an applicant from:
 - a. Any of the procedural or administrative provisions of this title, or
 - b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
 - c. Use or building restrictions, or
 - d. Any provisions of the critical areas development standards except as provided in Article 6;
 9. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
 10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; or
 11. The variance is the minimum necessary to grant relief to the applicant.

15.25.060 Rezones – Type IV or V review process. (Chapter 13.62)

- A. Purpose.** The purpose of this section is to provide procedures for amending the text, maps, and charts of this title, and amendment criteria for amending the official zoning map.
- B. Procedures.** Site specific rezones are subject to the Type IV review process as set forth in Chapter 15.21. All other rezones are subject to the Type V review process as set forth in Chapter 15.21.
- C. Decision criteria.** The city may approve or approve with modifications an application for a rezone of property only if the applicant has adequately demonstrated that all of the following statements apply to the proposed rezone:
1. The rezone is consistent with the comprehensive plan;
 2. The rezone will not adversely affect the public health, safety or general welfare;
 3. The rezone is warranted in order to achieve consistency with the comprehensive plan;
 4. The rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject rezone;
 5. The rezone is consistent with the criteria for the applicable zoning district as set forth in ECC Chapter 15.30; and
 6. The rezone has merit and value for the community.

The burden of this demonstration is on the rezone applicant.

Applicants may propose special conditions to be imposed on the proposed site-specific rezone which the city may include in any approval of the rezone. The applicant may also agree to any special conditions that the city indicates would be necessary for approval of the rezone. If the applicant does not agree to such special conditions, the city may deny the rezone request.

15.25.070 Master site plans for regional retail commercial projects – Type IV review process. (13.25.070 and 13.25.110)

- A. Purpose.** The purpose of this section is to provide procedures for master site plans for regional retail commercial projects.
- B. Procedures.** Master site plans for regional retail commercial projects are subject to the Type IV review process, with the following supplemental provisions:
1. Recommendation. The landmarks and design commission will review the project and make a recommendation to the city council at a public meeting as defined in ECC 15.13.160.
 2. Expiration of regional retail commercial master site plan. Within 5 years after the date of regional retail commercial master site plan approval, a complete building permit application shall be submitted for no less than 100,000 square feet; otherwise the

regional retail commercial master site plan approval shall expire and be of no further effect.

3. Concurrent applications. Unless an applicant for a preliminary subdivision or binding site plan requests otherwise, a regional retail commercial master site plan shall be processed together with a preliminary subdivision or binding site plan to the extent that procedural requirements allow for simultaneous processing.
4. Extensions. Knowledge of the expiration date and initiation of a request for an extension of a regional retail commercial master site plan is the responsibility of an applicant. Requests for an extension of time must be submitted to the department at least 60 days prior to the expiration of regional retail commercial master site plan approval. The department shall schedule the request for an extension as a public hearing before the city council. Only one extension of not more than 5 year(s) may be granted, and the extended regional retail commercial master site plan may be subject to any new or amended regulations, requirements, policies or standards which have been adopted after the original date of approval, unless 50 percent or more of the on-site work has commenced on all phases.
5. Master site plan revisions. Revisions to a regional retail commercial master site plan may be approved through the Type I review process so long as the revision does not result in an increase in the number of on-site parking spaces by more than 10 percent of the amount originally approved or an increase in the square footage of building gross floor area by more than 10 percent of the amount originally approved. Revisions of approved site master plans in excess of the above amount shall require a Type IV review process as described herein and in Chapter 15.21.

C. Decision criteria. See ECC Chapter 15.35.

15.25.080 Comprehensive plan amendments – Type V review process. (NEW)

A. Purpose. A comprehensive plan amendment or review is a mechanism by which the city may modify the text or map of the comprehensive plan in accordance with the provisions of the Growth Management Act, in order to respond to changing circumstances or needs of the city, and to review the comprehensive plan on a regular basis.

B. Initiation of text and map amendments.

1. The city's comprehensive plan shall be subject to continuing evaluation and review by the city. Any amendment or revision to the comprehensive plan shall conform to RCW Chapter 36.70A.
2. Comprehensive plan amendments may be initiated by citizens, by the planning commission or other boards and commissions of the city, city staff, city council, or any other interested persons including applicants, hearing examiners and staff of other agencies. The proposed amendments or revisions to the comprehensive plan shall be docketed and considered by the city no more frequently than once every year except

that amendments may be considered more frequently under the following circumstances:

- a. The initial adoption of a subarea plan;
 - b. The adoption or amendment of a shoreline master program under the procedures set forth in RCW Chapter 90.58; or
 - c. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a city budget.
3. All amendment proposals shall be considered by the city concurrently so the cumulative effect of the various proposals can be ascertained. However, the city may adopt amendments or revisions to its comprehensive plan that conform with RCW Chapter 36.70A whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with a court.
 4. The city shall periodically review the densities permitted within its boundaries, and to the extent to which urban growth has occurred within the city according to the timetable established by the Growth Management Act. The city shall revise its projected population figures a minimum of every 10 years to accommodate the urban growth projected to occur in the city for the succeeding 20 year period.

C. Procedures. Comprehensive plan amendments are subject to the Type V review process with the following variations:

1. Written requests to amend the comprehensive plan shall be submitted to the planning department. The city shall establish a start and ending date for the call for acceptance of written requests, and such shall be advertised in accordance with the city's noticing requirements. All plan amendment requests shall be considered for docketing by city council on or about its first regular meeting in July for possible consideration for inclusion in the comprehensive plan during the annual amendment process. The docketed list of proposed amendments shall be presented to the planning commission within 30 days of the docketing date. The planning commission shall review the docketed amendments and after holding a public hearing shall make a recommendation to the city council prior to council's first regular meeting in October on whether or not to move forward on consideration of docketed amendments. City council will hold a public hearing on or about its first regular meeting in October to take public comment on the docketed amendments.
2. Consideration of comprehensive plan amendments.
 - a. The city council, after a recommendation from staff and the planning commission, and after holding a public hearing, can decide that an amendment can be adopted in the current amendment cycle or that the amendment remains on the docket list for future consideration, or that the amendment be denied further consideration.
 - b. The city council's decision as to the disposition of the amendment shall be final and is not appealable.

3. Preparation of plan text and map amendments. It is the responsibility of the department to review and oversee the preparation of all materials to express, explain, or depict the various aspects or elements of the text or map amendments including that documentation required by the State Environmental Policy Act. The planning commission has the responsibility to approve all of its findings of fact and recommendations which are to be transmitted to the city council for their consideration.
4. Review of text and map amendments. The city may request other city boards or agencies or other governmental entities to provide comments and recommendations on comprehensive plan amendments. The comments and recommendations must be submitted to the city by the date of the planning commission's hearing unless the city grants an extension of time. In proposing any changes to its comprehensive plan, the city shall notify the department of community, trade and economic development (CTED) of its intent to adopt such amendments at least 60 days prior to final adoption. The city shall transmit a complete and accurate copy of its comprehensive plan to CTED within 10 days of adoption in accordance with state law.
5. Letters of support or objection. Letters of support or objection to a proposed comprehensive plan amendment may be filed by any interested party. The letters must be filed by the date of the city council public hearing unless an extension of time is granted.
6. Processing of text and map amendments.
 - a. The city may use any or all of the following techniques to provide for early and continuous public participation in the development and/or amendments of the city's comprehensive plan:
 - i. Opportunity for written comments;
 - ii. Public meetings;
 - iii. Newsletter articles;
 - iv. Consideration of and response to public comments.
 - b. The planning commission shall make its findings of fact and recommendation on a proposed amendment after conducting a public hearing. The commission shall make one of 4 decisions in considering text and map amendments:
 - i. Approval in the form submitted for public hearing;
 - ii. Approval with changes;
 - iii. Approval in part; or
 - iv. Disapproval.
7. Planning commission public hearing and transmittal of decision. Staff shall transmit the planning commission's recommendation to the city council as part of a staff report to the city council.
8. City council action.

- a. Upon receipt of the commission's findings and recommendations on the comprehensive plan and map amendments, the council shall consider the proposed amendment at a public meeting, holding a public hearing(s) prior to a decision. The council in its consideration shall make one of the following decisions:
 - i. Approval in accordance with the findings and recommendations submitted by the planning commission;
 - ii. Approval with modifications;
 - iii. Refer all or part of the plan text or map amendment proposal back to the planning commission;
 - iv. Refer all or part of the plan text or map amendment proposal to the following year's annual amendment process; or
 - v. Disapprove.
 - b. If the council's decision is to refer the amendment request back to the planning commission, the council must specify which matters it wishes reconsidered by the planning commission. The final form and content of the comprehensive plan is determined by the city council.
9. Notice of public hearing. Notice of all public hearings will be made in accordance with state and local laws.
10. Final filing with city clerk. The comprehensive plan together with any and all amendments shall be provided to the city clerk to be placed in a permanent file and made available for public inspection.
11. Appeals of decisions. All requests for review by the growth management hearings board shall be initiated by filing a petition in accordance with RCW Chapter 36.70A, 90.58 or 43.21C. Only parties of record may initiate an appeal of the city council's final decision.

D. Decision criteria.

1. Criteria for site specific amendments.
 - a. Conditions in the vicinity of the proposal have markedly changed since the subject property was designated, and under those changed conditions, a plan amendment is within the public interest.
 - b. The proposal is limited in scope and can fit within the planning department's work program for the current year.
 - c. The proposal is correcting an inconsistency within the plan or is a clarification of the plan.
 - d. The public interest is served by dealing with the proposal at the present time rather than later.
 - e. The proposal bears a substantial relation to the promotion and preservation of public health, safety and welfare.
 - f. The proposal will result in long-term benefits to the community as a whole and is in the best interest of the community.
2. Criteria for area wide amendments.

- a. The amendment is consistent with the Growth Management Act and not inconsistent with the other provisions of the comprehensive plan and city policies; or
- b. The amendment addresses changing circumstances, changing community values, incorporates a sub area plan consistent with the comprehensive plan vision or corrects information contained in the comprehensive plan; or
- c. The amendment will benefit the community as a whole, will not adversely affect community facilities, the public health, safety or general welfare.

15.25.090 Land development code amendments – Type V review process. (NEW)

- A. Purpose.** An amendment to the LDC (and where applicable amendment of the zoning map) is a mechanism by which the city may bring its land use and development regulations into conformity with the comprehensive plan or respond to changing conditions or needs of the city.
- B. Procedures.** Land development code amendments are subject to the Type V review process as set forth in Chapter 15.21. Site specific rezones are governed by ECC 15.25.060.
- C. Decision criteria.** The city council may approve or approve with modifications an amendment proposal for the text of the LDC if:
 1. The amendment is in accordance with the comprehensive plan; and
 2. The amendment will not adversely affect the public health, safety or general welfare; and
 3. The amendment is not contrary to the best interest of the citizens and property owners of the city.

15.25.100 Siting essential public facilities – Type V review process. (NEW)

- A. Purpose.** To establish a process for establishing facilities identified in RCW 36.70A.200 that are typically difficult to site.
- B. Procedures.** Siting essential public facilities are subject to the Type V review process as set forth in Chapter 15.21, with the following supplemental provisions:
 1. Service area. The director shall determine if the facility serves a regional, countywide, statewide or national need. If it does, then the director may condition the review with a requirement that the review process include one or more sites in parts of the service area outside of Ellensburg.
 2. Multi-jurisdictional review. Where more than one local government is involved in the review process, Ellensburg staff shall participate in a multi-jurisdictional review process and use the data, analysis and environmental documents prepared in that process in the city's review if Ellensburg determines those documents are adequate.
- C. Decision criteria.** The city council may approve or approve with modifications the siting of essential public facilities if:

1. The amendment is in accordance with all city ordinances and the comprehensive plan (notably Chapter 11, Essential Public Facilities), including;
 - a. The future land use map;
 - b. The Capital Facilities Element and budget;
 - c. The Utilities, Community Housing, Economic Development, Urban Growth Area, and Transportation Elements;
2. The amendment will not adversely affect the public health, safety or general welfare; and
3. The amendment is not contrary to the best interest of the citizens and property owners of the city.

15.26 Subdivisions (*current Title 12*)

15.26.010 Citation of chapter. (*NEW*)

This chapter may be cited as the city of Ellensburg Subdivision Ordinance and shall supplement and implement the state regulations of plats, subdivisions and dedications.

15.26.020 Purpose. (*12.04.040*)

Subdivision is a mechanism by which to divide land into lots, parcels, sites, units, plots, condominiums, tracts, or interests for the purpose of sale. The purposes of subdivision regulations are:

- A. To provide criteria, regulations, processes and standards to govern the division of land within the city;
- B. To ensure that public facilities and services necessary to support development are adequate to serve the development at the time development occurs; and
- C. Promote the public health, safety and general welfare in accordance with standards established by the state subdivision law, as set forth in RCW 58.17.010.

15.26.030 Subdivision categories. (*NEW*)

- A. Boundary line adjustment. A minor reorientation of a lot line between existing lots to correct an encroachment by a structure or improvement to more logically follow topography or other natural features, or for other good cause, which results in no more lots than existed before the boundary line adjustment. A boundary line adjustment may also include an extinguishment of an existing lot line resulting in the merger of 2 or more lots into a single lot of record.
- B. Short subdivision. A subdivision of 9 or fewer lots.
- C. Formal subdivision. A subdivision of 10 or more lots.
- D. Binding site plan. A land division for commercial, industrial, and condominium type of developments.

15.26.040 Exemptions. (12.04.120)

The provisions of this subchapter do not apply to the exemptions specified in the state law per RCW 58.17.04, including but not limited to:

- A. Cemeteries and other burial plots while used for that purpose;
- B. Divisions made by testamentary provisions, or the laws of descent;
- C. Divisions of land for the purpose of lease when no residential structure other than mobile homes and/or manufactured homes are permitted to be placed on the land, and for which a binding site plan for the use of the land as a manufactured home park has been approved by the city; and
- D. Divisions of land which are the result of actions of government agencies to acquire property for public purposes, such as condemnation for roads.

15.26.050 Boundary line adjustment – Type I review process. (NEW)

- A. Procedures.** Adjustments of property boundary lines shall be reviewed by the director and certified as meeting the requirements of this section within 10 working days after receiving the application.
- B. Decision criteria.** The director shall approve an application for a boundary line adjustment if it is determined that:
 - 1. The lots, after the property boundary adjustment, are in conformance with all city codes;
 - 2. Any existing nonconforming situations are not made more nonconforming in nature; and
 - 3. No third-party ownership or additional lot, tract, parcel, division, or building site is created by the property boundary adjustment.

Boundary line adjustments shall not be subject to any minimum improvements as outlined in ECC 15.26.060(F).

- C. Final decision.** If the director determines that all the above criteria are met, he or she shall send a letter to the applicant and to the county assessor to that effect. If the director determines one or more of the above criteria are not met, he or she shall send a letter to the applicant and county assessor listing those criteria which are not met in the proposed property boundary adjustment.

15.26.060 Preliminary subdivision review procedures and criteria. (Chapter 12.08)

A. Procedures.

- 1. The short subdivision may also be referred to as a short plat – Type II review process as set forth in ECC Chapter 15.21.
- 2. The formal subdivision may also be referred to as long plat – Type IV review process as set forth in ECC Chapter 15.21.

3. Time limits. For all short subdivisions approval of the preliminary short subdivision shall be effective for one year from the date of preliminary short subdivision approval, during which time the final short subdivision may be submitted. For all formal subdivisions that are granted preliminary subdivision approval between June 10, 2010, and December 31, 2014, approval of the preliminary subdivision shall be effective for 7 years from the date of approval by the city council, during which time the final subdivision may be submitted.

For all formal subdivisions that are granted preliminary approval between June 10, 2010, and December 31, 2014, approval of the preliminary subdivision shall be effective for 7 years from the date of approval by the city council, during which time the final subdivision may be submitted.

For all formal subdivisions granted preliminary approval prior to June 10, 2010, and that are still within the then-applicable 5-year preliminary subdivision duration of approval, or that may have been granted an extension to that duration of approval and said extension time period is still running, the duration of approval shall be effective for 7 years from the date of original preliminary subdivision approval by the city council, during which time the final subdivision may be submitted.

For all subdivisions granted preliminary approval after December 31, 2014, the duration of approval shall be effective for 5 years from the date of preliminary subdivision approval by the city council, during which time the final subdivision may be submitted.

- B. Lot design and zoning.** Subdivisions shall conform to the form and intensity standards set forth in ECC Chapter 15.32.
- C. Subdivision design and block structure.** Subdivisions shall conform to design and block structure standards set forth in ECC Chapter 15.41.
- D. Streets.** Subdivisions shall conform to the street design standards set forth in ECC Chapter 15.40.
- E. Critical areas.** Subdivisions shall conform with applicable critical areas standards set forth in ECC Article 6.

F. Dedications and improvements.

The director in short subdivision approvals and The city council in formal subdivision approvals may require dedication of land and improvements in the proposed subdivision for public use per the public works development standards (ADD LINK) and ECC Title 9 (Utilities), necessary to mitigate project impacts to utilities, rights-of-way, and stormwater systems.

Required improvements may include, but are not limited to, streets, curbs, pedestrian walks and bicycle paths, critical area enhancements, sidewalks, street landscaping, water lines, sewage systems, drainage systems and underground utilities.

15.26.070 Special final subdivision requirements. (NEW)

Special conditions required by this title for individual subdivision approval shall be noted on the final subdivision or plat to ensure their implementation. This may include:

- A. Special site specific use provisions or restrictions set forth in the use tables in ECC 15.31.040;
- B. The street frontage type designation for all new streets in non-residential and mixed-use zoning districts and for applicable streets where non-residential uses are permitted in the RS zone per ECC 15.31.040;
- C. The maximum FAR standards for townhouses and multifamily uses, where permitted through density bonus provisions per ECC Chapter 15.33;
- D. Conditions associated with approved density bonus provisions set forth in ECC Chapter 15.33 including energy efficient construction, mix of housing types, off-street trails, parkland/open space preservation, public facilities, transfer of development rights, historic preservation, and/or affordable housing;
- E. Special subdivision restrictions associated with lots within the airport overlay zone per ECC 15.36.030(B);
- F. Special setback provisions to help meet residential subdivision design diversity provisions per ECC 15.41.030(E);
- G. Any reciprocal use easements, as provided in ECC 15.41.050 for zero lot line or reciprocal use lot configurations;
- H. Courtyard access easements and associated maintenance agreements as set forth in ECC 15.41.050(C);
- I. Applicable critical areas tracts per ECC 15.61.260;
- J. Applicable flood prone areas per ECC 15.63.050(F); and/or
- K. Other special conditions where necessary to meet the provisions of this title.

15.26.080 Changes to approved preliminary subdivision. (NEW)

- A. Preliminary subdivision.** The director may approve minor changes to an approved preliminary subdivision, or its conditions of approval. If the proposal involves additional lots, rearrangements of lots or roads, additional impacts to surrounding property, or other major changes, the proposal shall be reviewed in the same manner as a new application.
- B. Recorded final subdivision.** An application to change a final subdivision that has been filed for record shall be processed in the same manner as a new application. This section does not apply to affidavits of correction of boundary line adjustments.

**15.26.090 Site development permit for required subdivision improvements –
Type I review process. (NEW)**

Engineering plans for improvements required as a condition of preliminary approval of a subdivision shall be submitted to the department for review and approval of a site development permit, allowing sufficient time for review before expiration of the preliminary subdivision approval. Permit expiration time limits for site development permits shall be as indicated in ECC 15.22.090.

15.26.100 Installation of improvements. (NEW)

A. Timing and inspection fee. The applicant shall not begin installation of improvements until the director has approved the improvement plans, the director and the applicant have agreed in writing on a time schedule for installation of the improvements, and the applicant has paid an inspection fee.

B. Completion – Bonding. The applicant shall either complete the improvements before the final short or formal subdivision is submitted for city council approval, or the applicant shall post a bond or other suitable surety to guarantee the completion of the improvements within one year of the approval of the final short or formal subdivision. The bond or surety shall be based on the construction cost of the improvement as determined by the director. (ADD LINK TO SECTION 9 OF THE PUBLIC WORKS DEVELOPMENT STANDARDS)

C. Acceptance – Maintenance bond. The director shall not accept the improvements for the city of Ellensburg until the improvements have been inspected and found satisfactory, and the applicant has posted a bond or surety for 15 percent of the construction cost to guarantee against defects of workmanship and materials for 2 years from the date of acceptance. (ADD LINK TO SECTION 9 OF THE PUBLIC WORKS DEVELOPMENT STANDARDS)

15.26.110 Final subdivision review procedures. (NEW)

A. Submission. The applicant may not file the final subdivision for review until the required site development permit has been submitted and approved by the city.

B. Final short subdivision. Within one year of the preliminary short subdivision approval the director shall conduct an administrative review of a proposed final short subdivision (Type I review process). Only when the director finds that a proposed final short subdivision conforms to all terms of the preliminary short subdivision and meets the requirements of Chapter 58.17 RCW, other applicable state laws, and ECC Title 15 which were in effect at the time when the preliminary short subdivision application was deemed complete, the director shall sign on the face of the short plat signifying the director's approval of the final short subdivision.

C. Final formal subdivision. After an administrative review by the director, the final formal subdivision shall be presented to the city council. Only when the city council finds that a subdivision proposed for final subdivision approval conforms to all terms of the preliminary subdivision, and meets the requirements of Chapter 58.17 RCW, other applicable state laws, and ECC Title 15 which were in effect at the time when the preliminary subdivision

application was deemed complete, the Mayor shall sign on the face of the plat signifying the city council's approval of the final formal subdivision.

- D. Acceptance of dedication.** City council's approval of a final formal subdivision or the director's approval of a final short subdivision constitutes acceptance of all dedication shown on the final plat.

15.26.120 Final subdivision – Filing. (12.08.600)

The subdivision shall not be officially complete until the signed original final plat and subdivision improvements agreement have been recorded with the Kittitas County auditor. Said documents shall be recorded by the administrator within 10 working days after city council approval in the presence of the applicant and with the cost of recording paid by the applicant. Filing of the final plat shall not relieve the property owner of the obligation to complete the minimum public improvements.

- A. Building permits may be issued for a portion of the lots or tracts resulting from the subdivision action only if all of the following conditions are first satisfied:
1. All public improvements must either be accepted as complete by the city, or partially completed as specified herein below with the remainder of the improvements secured by a surety guarantee.
 2. The signed original final plat and any applicable subdivision improvements agreements must be recorded with the Kittitas County auditor;
 3. The municipal water system for that portion of the development included in the recorded final plat must be accepted as complete by the city. This includes the placement and charging of all fire hydrants included with the water system;
 4. Initial installation of all sanitary sewer mains for that portion of the development included in the recorded final plat shall be completed to the point that no additional trenching within the subdivision will be required for sanitary sewer mains; and
 5. Street improvements required to serve those lots or tracts of record for which building permits are sought shall be completed in accordance with the following options:
 - a. Placement of gravel base for street improvement just prior to final paving of the street surface; or
 - b. Placement of gravel on a defined access way and turning area servicing the lots or tracts requested for building permits and maintenance of such surface sufficient to support the passage of the city's emergency vehicles. The authority to approve the initial and continuing use of such temporary access shall be the fire chief's, or his/her designee, according to the applicable provisions of the city's fire code.
- B. Independent of the above requirements, any unsubdivided lot or tract included in the subdivision meeting all of the applicable zoning and general development requirements of the city may be issued a building permit for a primary structure or use only if said lot or tract does not already contain a primary structure or use and further is approved by the fire chief for adequacy of location and function of existing fire hydrants and adequate access for

emergency vehicles as set forth above in subsection (A)(5)(b) of this section. Permits for accessory buildings may be considered for existing uses and subject to all city development regulations. [Ord. 4362, 2003; Ord. 4028 § 20, 1996; Ord. 3891 § 3, 1993; Ord. 3235 § 21, 1979.]

15.26.130 Effect of changes in statutes, ordinances, and regulations on vesting of final plats. (NEW)

All lots in a final short subdivision or final formal subdivision shall be a valid land use notwithstanding any change in zoning laws for the period specified in RCW 58.17.170 from the date of filing. A subdivision shall be governed by the terms of approval of the final subdivision, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150(1) and (3) for the period specified in RCW 58.17.170 after final subdivision approval unless the city council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

15.26.140 Further division – Short subdivisions. (12.10.320)

A further division of any lot created by a short subdivision shall be reviewed and shall meet the requirements of this chapter for formal subdivision if the further division is proposed within 5 years from the date the final subdivision was filed for record; provided, however, that when a short subdivision contains fewer than 9 parcels, nothing in this subchapter shall be interpreted to prevent the owner who filed the original short subdivision, from filing a revision thereof within the 5-year period in order to create up to a total of 9 lots within the original short subdivision boundaries.

15.26.150 Binding site plans – Type I review process. (NEW)

A. Purpose.

The purpose of the binding site plan process is to provide an alternative to the standard subdivision process for specific types of development. The binding site plan shall only be applied for the purpose of dividing land for:

1. Sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4);
2. Mixed use development; and
3. Condominiums as provided in either Chapter 64.32 or 64.34 RCW, consistent with RCW 58.17.040(7).

B. Procedures.

1. Type I review process. An application for a binding site plan review shall be processed by means of a Type I review process as set forth in ECC Chapter 15.21 and pursuant to applicable sections of ECC Title 15, using approval criteria in paragraph (2) below.
2. The site that is subject to the binding site plan shall consist of one or more contiguous lots legally created.

3. The site that is subject to the binding site plan may be reviewed independently for fully developed sites; or, concurrently with a development permit application.
 4. The binding site plan process merely creates or alters lot lines and does not authorize substantial improvements or changes to the property or the uses thereon.
- C. Recording and binding effect.** Prior to recording, the approved binding site plan shall be surveyed and the final recording forms shall be prepared by a professional land surveyor, licensed in the State of Washington. Surveys shall include those items prescribed by state law.
- D. Amendment, modification and vacation.** Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application.

15.27 ENVIRONMENTAL PROCEDURES - STATE

ENVIRONMENTAL POLICY ACT (SEPA) *(current Chapter 1.42)*

15.27.010 Authority.

This chapter is adopted under the authority of the State Environmental Policy Act ("SEPA"), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This chapter contains the city's SEPA procedures and policies.

15.27.020 Purpose.

The purposes of this chapter are to adopt the uniform requirements of Chapter 197-11 WAC and to establish specific local procedures and policies where appropriate in order to perform environmental review and comply with SEPA.

15.27.030 Conflicts.

Any irreconcilable conflict between this chapter, Chapter 197-11 WAC, and/or Chapter 43.21C RCW shall be resolved in favor of the provision that is most protective of the environment and meets the minimum standards of 197-11 WAC.

15.27.040 Scope and policy.

The city of Ellensburg adopts by reference WAC 197-11-030, as now existing or hereinafter amended, subject to the following:

- A. Under WAC 197-11-030(1) and (2), the terms "agency" and "agencies" shall include the city of Ellensburg and its respective departments.
- B. Under WAC 197-11-030(2)(a), the text is revised to interpret and administer the policies, regulations, and laws of the state of Washington and applicable ordinances and resolutions of the city of Ellensburg in accordance with the policies set forth in RCW 43.21C and WAC 197-11.

- C. The city establishes these procedures to implement the State Environmental Policy Act, herein referred to as "SEPA," Chapter 43.21C RCW, consistent with those rules under Chapter 197-11 WAC. The procedures are promulgated under WAC 197-11-020(1), which states: "Each agency must have its own SEPA procedures consistent with" Chapter 197-11 WAC and Chapter 43.21C RCW. Consistent with WAC 197-11-020(3), these provisions, Chapter 197-11 WAC, and Chapter 43.21C RCW, must be read together as a whole to comply with the spirit and letter of the law.

15.27.050 Definitions.

The city adopts by reference WAC 197-11-040, 197-11-220 and 197-11-700 through 197-11-799, as now existing or hereafter amended, subject to the following:

- A. Terms defined under ECC Chapter 15.13 shall also apply to this chapter.
- B. Where a conflict exists between those terms under ECC Chapter 15.13 and terms under WAC 197-11-040, 197-11-220, and 197-11-700 through 197-11-799, the more specific definition that meets the minimum standards and spirit of 197-11 WAC shall apply.

15.27.060 Purpose and general requirements.

The city adopts by reference WAC 197-11-055 through 197-11-158, WAC 197-902 through 197-11-906, and WAC 197-11-914 through 197-11-916, as now existing or hereafter amended, subject to the following:

- A. Analyzing similar actions in a single document.** The city adopts the optional provision of WAC 197-11-060(3)(c).
- B. Consolidated review.** Except as otherwise exempted, environmental review under this chapter and development proposal review under this title shall be consolidated as specified in ECC 15.21.020.
- C. Time guidelines.** Under 197-11-055(2)(b), the responsible official will make a threshold determination within 90 days of determining that a completed application has been submitted, consistent with WAC 197-11-055(2)(d), subject to:
1. The calculation of the number of days in subsection (C)(2) of this section shall not include those days between the mailing of any request for additional information and the re-submittal of such requested information.
 2. The responsible official shall not make a threshold determination when there is not adequate information to make a threshold determination within ninety (90) days. When there is not adequate information to make a determination at the end of ninety (90) days, the responsible official shall notify the applicant in writing regarding the information required to make a threshold determination.
 3. Content of SEPA checklist—Responsibility. The applicant shall prepare the initial environmental checklist, unless the responsible official specifically elects to prepare the checklist. The responsible official shall make a reasonable effort to verify the

information in the checklist and supporting documentation and shall have the authority to determine the final content of the checklist.

4. Additional information for SEPA checklist—Timelines. The responsible official may set reasonable deadlines for the submittal of information, studies, or documents that are necessary for, or subsequent to, threshold determinations. Unless an extension is requested in writing and approved, failure to meet such deadlines shall cause the application to be deemed withdrawn.

D. Environmental review costs. The applicant shall pay all costs related to environmental review in accordance with the chapter, including compliance with public notice requirements.

15.27.070 Planned actions.

The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:

- 197-11-164 Planned actions—Definitions and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions—Procedures for adoption.
- 197-11-172 Planned actions—Project review.

Planned actions allowed under this chapter shall also comply with the permit processes and procedures established in ECC Title 15, Article 2.

15.27.080 Integration with Model Toxics Control Act.

The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:

- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial action.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

15.27.090 Designation of responsible official.

The city adopts by reference section 197-11-910 WAC, as now existing or hereafter amended, as supplemented in this chapter.

- A. For those proposals for which the city is a lead agency, the responsible official shall be the community development director or his/her designee.
- B. For all proposals for which the city is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required EIS, and

perform all other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference.

15.27.100 Lead agency determination and responsibilities.

The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:

- 197-11-050 Lead agency.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and/or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

- A. The responsible official shall determine the lead agency for any application for or initiation of a proposal that involves a nonexempt action, as provided in WAC 197-11-050, unless the lead agency has been previously determined or unless another agency is in the process of determining the lead agency.
- B. When the city is the lead agency for a proposal, the responsible official shall supervise compliance with the necessary threshold determination requirements, and if an EIS is necessary, shall supervise the preparation of the EIS.

15.27.110 Categorical exemptions – Adoption by reference.

- A. The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:
 - 197-11-305 Categorical exemptions.
 - 197-11-800 Categorical exemptions except as noted in subsection B of this section.
 - 197-11-880 Emergencies.
 - 197-11-890 Petitioning DOE to change exemptions.

- B. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b):
1. For residential dwelling units in 197-11-800(1)(b)(i) up to 9 dwelling units.
 2. For agricultural structures in 197-11-800(1)(b)(ii) up to 10,000 square feet.
 3. For office, school, commercial, recreational, service or storage buildings in 197-11-800(1)(b)(iii) up to 12,000 square feet and up to 20 parking spaces.
 4. For parking lots in 197-11-800(1)(b)(iv) up to 20 parking spaces.
 5. For landfills and excavation in 197-800(1)(b)(v) up to 200 cubic yards.

15.27.120 Threshold determinations – Adoption by reference.

The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:

- 197-11-300 Purpose of this part.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.

- A. Pre-threshold determination comment period.** Prior to issuance of a threshold determination, the city shall provide a 14 day pre-threshold determination comment period, unless the city has chosen to use the Optional DNS Process established in WAC 197-11-355, in which case there shall be no pre-threshold determination comment period and the threshold determination process shall be as established in WAC 197-11-310 thru 390. The pre-threshold determination comment period process is as follows:
1. Public notice of the project application and completed SEPA Checklist and the opportunity to provide pre-threshold determination comments shall be provided in accordance with the Type II permit public notice requirements established in ECC 15.21.050 and 15.22.040, and WAC 197-11-510, and WAC 197-11-340(b) except that the requirement to mail notice to property owners within 300 feet of the project shall not be required for the pre-threshold determination notice unless the underlying permit also requires such mailed notice. The notice shall include the pre-threshold comment period deadline and shall advise that additional comment opportunities may exist at the time a threshold determination is issued.
 2. The pre-threshold determination comment period shall run for 14 calendar days beginning on the day following the date that public notice was provided pursuant to subsection 1 above.

3. Comments must be made in writing and must be submitted to the responsible official prior to the expiration of that 14 day comment period.
 4. Prior to making the threshold determination, the responsible official may request that the applicant provide written responses to any timely submitted comments, and all timely submitted comments and applicant responses shall be included in the SEPA record and considered by the responsible official in making the threshold determination.
- B. Mitigated determination of non-significance.** Pursuant to WAC 197-11-350, the responsible official may issue a DNS which may include conditions attached to the proposal by the responsible official, or may issue a DNS which includes conditions based on changes to, or clarifications of, the proposal that have been made by the applicant in writing prior to issuance of the threshold determination. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific.
- C. Public notice.** Public notice of the threshold determination shall be provided as required pursuant to ECC 15.21.050 and 15.22.040, WAC 197-11-340, WAC 197-11-355, and WAC 197-11-360.
- D. Environmental checklist.**
1. A completed environmental checklist, a completed critical area information form and/or critical area report deemed necessary pursuant to ECC Chapter 15.61.080 (CAO), shall be filed at the same time as an application for a development proposal or other approval not exempted by this chapter. The checklist shall be in the form of WAC 197-11-960 with such additions that may be required by the responsible official in accordance with WAC 197-11-906(4) and this chapter.
 2. A checklist is not needed if the responsible official determines that one of the following applies: an EIS is required; SEPA compliance has been completed; SEPA compliance has been initiated by another agency.
 3. The responsible official shall use the environmental checklist to determine the lead agency. If the city is the lead agency, information provided in the environmental checklist, critical area information form or critical area report shall assist the responsible official in making a threshold determination.
 4. For private proposals, the applicant is required to complete the environmental checklist, critical area information form and/or critical area report. The responsible official may provide assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist, critical area information form and/or critical area report for that proposal.
 5. The responsible official may decide to annotate the environmental checklist for a private proposal if the responsible official has relevant information or if the applicant has provided incomplete or inaccurate information.

15.27.130 Environmental impact statements (EIS) and other environmental documents.

The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping.
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on non-project proposals.
- 197-11-443 EIS contents when prior non-project EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.

- A. Pursuant to WAC 197-11-408(2)(a), all comments on a DS and scoping notices shall be in writing, except where a public meeting on EIS scoping occurs pursuant to WAC 197-11-410(1)(b).
- B. Pursuant to WAC 197-11-420, 197-11-620, and 197-11-625, the responsible official shall be responsible for preparation and content of an EIS and other environmental documents. The responsible official shall contract with consultants, as necessary, for the preparation of environmental documents and EISs. The responsible official may consider the opinion of the applicant regarding the qualifications of the consultant, but the responsible official shall retain sole authority for selecting persons or firms to author, co-author, provide special services or otherwise participate in the preparation of required environmental documents.
- C. Consultants or subconsultants contracted by the city to prepare environmental documents for a private development proposal:
 - 1. Shall not act as agents for the applicant in preparation or acquisition of associated underlying permits or actions;
 - 2. Shall not have a financial interest in the proposal for which the environmental documents is being prepared; and
 - 3. Shall not perform any work nor provide any services for the applicant in connection with or related to the proposal.

- D. The responsible official may include additional elements as part of the environment for the purpose of a complete EIS analysis, however such additional elements shall not add to the criteria for threshold determinations or perform any other function or purpose under this chapter unless such elements otherwise fall within the scope of this chapter.

15.27.140 Public notice and comments – Adoption by reference.

The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:

- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.

- A. Whenever the city issues a DNS under WAC 197-11-340(2) or a MDNS under WAC 197-11-350 or a DS under WAC 197-11-360(3), the city shall give public notice as follows:
1. If public notice is required for a nonexempt permit or approval, the notice shall state whether a DNS, MDNS or DS has been issued and when comments are due;
 2. If no public notice is required for the permit or approval, the city shall give notice of the DNS, MDNS or DS by:
 - a. Posting the property, for a site-specific proposal;
 - b. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located; and
 - c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
 3. When the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
 4. If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).
- B. If a DNS is issued using the optional DNS process in WAC 197-11-355, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1)(b).

- C. Whenever the city issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license, and:
 - 1. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located; and
 - 2. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- D. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal as established in ECC 15.21.050 and 15.22.040.
- E. The city may charge the applicant a reasonable fee to cover the required public notice expenses for the SEPA review of the applicant's proposal.

15.27.150 Designation of official to perform consulted agency responsibilities.

The city adopts by reference 197-11-910, as now existing or hereafter amended, as supplemented in this chapter:

- A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request pertaining to a threshold determination or the scoping and reviewing of a draft EIS.
- B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 and 197-11-912 whenever the city is a consulted agency. The responsible official is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from appropriate departments of the city.
- C. The responsible official shall be responsible for reviewing all SEPA determinations made by Kittitas County. If it is the decision by the responsible official that any such SEPA determination substantially impacts the interests of the city, a response shall be forwarded to Kittitas County on behalf of the city.

15.27.160 Responsibility as consulted agency.

The city adopts by reference 197-11-912 WAC, as now existing or hereafter amended, as supplemented in this chapter. Pursuant to WAC 197-11-912, all requests from other agencies that the city consults on threshold investigations, the scope process, EISs or other environmental documents shall be submitted to the department of community development. The department of community development shall be responsible for coordination with affected city departments and for compiling and transmitting the city's response to such requests for consultation.

15.27.170 Using existing environmental documents.

The city adopts by reference WAC 197-11-600 through 197-11-640, as now existing or hereafter amended, by reference.

15.27.180 SEPA decisions.

The city adopts by reference the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, as supplemented in this chapter:

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

- A. The substantive authority set forth in this section is supplemental to all other authorities the city may possess under federal, state, regional and local law.
- B. The city may approve, condition, restrict, limit, modify or deny a development proposal under this chapter based on the following considerations:
 - 1. The conditions, restrictions or limitations are reasonably required to mitigate or prevent specific probable adverse environmental impacts identified in analytical documents prepared pursuant to this chapter or this title.
 - 2. The conditions, restrictions or limitations are reasonably related to the services, demands, or other impacts caused or created by the development proposal, will mitigate or avoid the adverse impacts, and are capable of being accomplished.
 - 3. The conditions, restrictions or limitations are based on one or more of the policies or goals identified in the comprehensive plan, other adopted city policies or the Ellensburg Municipal Code and cited in the decision document.
 - 4. The policies or goals on which the conditions, restrictions or limitations are based were in effect when the DNS, MDNS or EIS was issued.
 - 5. The conditions, restrictions or limitations are set forth in a written decision document.
 - 6. Whether other local, state or federal requirements or mitigation measures applied to the development proposal are sufficient to mitigate an identified significant environmental impact.
- C. In addition to the considerations set forth above (as may be applicable to a proposal), no development proposal shall be denied under this chapter unless:
 - 1. A finding is made that the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS; and
 - 2. A finding is made that there are no reasonable mitigation measures that are sufficient to mitigate the identified impacts.
- D. Applicants may propose voluntary mitigation or contributions in addition to any mitigation that may be required under this chapter.

15.27.190 SEPA/GMA integration.

The city adopts by reference WAC 197-11-210 through 197-11-235, as now existing or hereinafter amended as supplemented in this chapter.

15.27.200 Appeals.

- A. The city adopts by reference WAC 197-11-680, as now existing or hereafter amended, as supplemented in this chapter.
- B. Any interested person may appeal a threshold determination or the adequacy of a final EIS pursuant to the procedures set forth in this section. No other SEPA appeal shall be allowed. Appeals shall be as set out in ECC Chapter 15.23.
- C. All appeals filed pursuant to this section shall comply with the requirements of ECC Chapter 15.23. The procedural determination of the responsible official shall carry substantial weight in every appeal proceeding. The appeal provided by this section shall be a necessary prerequisite to standing to file any judicial appeal arising under this chapter.
- D. All appeals filed pursuant to this section shall be consolidated with the open record hearing on the underlying proposal except those listed as exempt from that requirement in RCW 43.21C.075(3)(b).

15.27.210 Notice of action.

- A. The city, applicant for, or proponent of, an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.
- B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk, applicant or proponent pursuant to RCW 43.21C.080.
- C. The filing of a notice of action officially starts the time period allowed for filing a judicial appeal of any decision made under this chapter.

15.27.220 Environmental critical areas—Adoption by reference.

NOTE: This is an optional section. If the city includes it in its SEPA ordinance, it will require certain projects that are currently categorically exempt from SEPA review, such as short plats, construction of a single family home or duplex, parking lot less than 21 spaces, to no longer be categorically exempt from SEPA IF LOCATED IN A CRITICAL AREA. If adopted, it would mean that those types of projects that were formerly categorically exempt from SEPA review would now have to undergo both SEPA review and Critical Area review. Currently such categorically exempt projects do not undergo SEPA review but do undergo critical area review if located in a critical area. Staff's view is that the city's critical area ordinance adequately addresses these types of projects that are SEPA categorically exempt projects and the dual review, with associated costs, is unnecessary.

The city adopts by reference WAC 197-11-908, as now existing or hereafter amended, as supplemented in this chapter. The city selects the following categorical exemptions as not being exempt when located in a critical area:

- 197-11-800(1) Minor new construction—flexible thresholds.
- 197-11-800(2)(d)—(e) Other minor new construction.
- 197-11-800(3) Repair, remodeling, and maintenance activities.
- 197-11-800(6)(a) Minor land use decisions.
- 197-11-800(23)(b)—(c) Utilities.
- 197-11-800(24)(g) Natural resources management.

15.27.230 Forms.

The city adopts by reference the following forms and sections of Chapter 197-11 WAC, as now existing or hereafter amended:

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance (DS) and scoping notice.
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

15.28 Ellensburg Landmark Register & Procedures *(Chapter 1.45)*

15.28.010 Short title. *(1.45.040)*

The following sections shall be known and may be cited as the “landmarks and design ordinance” of the city of Ellensburg.” [Ord. 4245, 2000.]

15.28.020 Declaration of purpose. *(1.45.080)*

This chapter is intended to identify, evaluate, designate, protect, enhance, and perpetuate historic places within the city of Ellensburg in order to:

- A. Safeguard the heritage of the city as represented by those buildings, districts, objects, sites, and structures which reflect significant elements of Ellensburg’s history;
- B. Foster civic pride in the beauty and accomplishments of the past;
- C. Stabilize and improve the economic vitality of buildings, neighborhoods, and the community as a whole;
- D. Strengthen the city’s tourism industry by enhancing its historic character;
- E. Facilitate early resolution of conflicts between preservation of historic resources and alternative land uses;
- F. Protect property values and public and private investment in the existing built environment;

- G. Provide incentives to property owners for the acquisition, preservation, restoration, redevelopment, and continued use of outstanding historic properties; and
- H. Encourage the rehabilitation of eligible historic properties through the “special valuation for improvements to historic property” program, a property tax incentive, as provided in Chapter [84.26](#) RCW.

15.28.030 Creation of Ellensburg landmarks and design commission. (1.45.160)

There is hereby created an Ellensburg landmarks and design commission which shall have the powers, duties and functions provided in this chapter. [Ord. 4245, 2000.]

15.28.040 Members, qualifications and terms. (1.45.200)

- A. The Ellensburg landmarks and design commission shall consist of 7 members appointed by a majority of the Ellensburg city council. A majority of members so appointed shall be residents of the city of Ellensburg.
- B. All members of the commission shall have demonstrated an active interest in historic preservation and design review.
- C. The commission shall include at least 2 owners of property from within the downtown and First Railroad Addition historic districts, as defined in 15.30.060(B) and (C). One member shall be a member of the city’s downtown task force and shall be designated by the downtown task force for a term of 4 years or until no longer a downtown task force member. One member shall be a general at-large position. The commission shall include at least 3 professionals who are selected from among the related fields of history, architecture, construction, landscape design, historic preservation, planning, anthropology, archaeology, cultural geography, American studies, land use law, or real estate.
- D. A commission action that would otherwise be valid shall not be rendered invalid by the temporary vacancy of one or all of the professional positions, unless the commission action is related to meeting certified local government (CLG) responsibilities cited in the certification agreement between the Ellensburg city council and the State Historic Preservation Officer.
- E. Appointment of new members to the commission shall be for a period of 4 years. Vacancies shall be filled by the Ellensburg city council for any unexpired term in the same manner as the original appointment. [Ord. 4245, 2000.]

15.28.050 Powers and duties. (1.45.240)

The primary role of the Ellensburg landmarks and design commission is two-fold: historic landmarks preservation and design review.

- A. Historic landmarks preservation.** In the area of historic landmarks preservation, the primary role of the Ellensburg landmarks and design commission is to identify and actively encourage the conservation of Ellensburg’s historic resources through a register of landmarks and a review of proposed changes to landmarks; to raise community awareness

of Ellensburg’s history and built environment; and to serve as the city’s primary resource in matters of heritage, historic planning, and preservation. In carrying out these responsibilities, the Ellensburg landmarks and design commission shall engage in the following:

1. Conduct and maintain a comprehensive inventory of historic places within the boundaries of the city of Ellensburg; publicize and periodically update inventory findings. Properties included in the inventory shall be noted on official zoning records with an “HI” (for historic inventory). This notation shall not modify the underlying zone classification.
2. Initiate and maintain the Ellensburg landmarks register. This official register shall be compiled of buildings, structures, sites, objects, and districts evaluated by the commission as possessing historic significance worthy of recognition by the city of Ellensburg and worthy of preservation.
3. Review citizen nominations to the Ellensburg landmarks register according to evaluation criteria set forth in ECC 15.28.080, and adopt standards in its rules to guide this review.
4. Develop incentive programs to assist landmark owners with the use, reuse, and redevelopment of historic buildings. Such incentives may include facade design assistance, revolving loan funds, and tax or building code relief.
5. Review proposals to alter or demolish landmarks, landmark sites, or landmark districts listed in the register as provided in ECC 15.28.090; and adopt standards in its rules to guide this review and the issuance of certificates of approval.
6. Conduct all commission meetings in compliance with Chapter [42.30](#) RCW, Open Public Meetings Act, provide for adequate public participation, and adopt standards in its rules to guide this action.
7. Submit nominations to the Washington Heritage Register and the National Register of Historic Places and adopt standards in its rules to guide this action.
8. Through staff, provide review and comment to the department of community development on development proposals affecting historic resources within the boundaries of the city of Ellensburg.
9. Provide review and comment to the Ellensburg city council on land use planning, housing, transportation, municipal improvements, and other activities proposed by any agency of the city of Ellensburg, Kittitas County, Washington State, or the federal government, as they relate to the historic resources of Ellensburg.
10. Advise the Ellensburg city council generally on matters of historic preservation and heritage tourism, and perform other related functions as assigned by the Ellensburg city council.
11. Investigate and report to the Ellensburg city council on current federal, state, local and private funding sources available to promote public and private historic preservation projects and heritage tourism in the city of Ellensburg.

12. Establish working liaisons with existing nonprofit organizations and with federal, state, and local government entities to further historic preservation objectives in Ellensburg.
13. Provide current information to property owners on techniques and appropriate treatments for maintaining and rehabilitating historic properties. This may take the form of pamphlets, newsletters, workshops, or similar activities.
14. Conduct educational and interpretive programs pertaining to Ellensburg's historic resources.
15. Serve as the local review board for special valuation as provided under Chapter [84.26](#) RCW.

B. Design review. In the area of design review, the primary role of the Ellensburg landmarks and design commission is to review and make recommendation on major design review projects, certain minor design review projects (those seeking specific departures), and modifications (including signage) to a registered landmark or any property located within a landmark district. See ECC 15.25.030 for the definitions of major and minor design review projects, ECC 15.50.030 for information on departures, and ECC 15.28.090 for the design review process for landmark property/district related projects.

15.28.060 Rules, officers and records. (1.45.280)

The landmarks and design commission shall establish and adopt its own rules of procedure, and shall select from among its membership a chairperson and such other officers as may be necessary to conduct the landmarks and design commission's business. A majority of the membership will constitute a quorum for the purpose of transacting business. Action by the landmarks and design commission shall be by majority vote. A tie vote on a motion to approve shall constitute a failure of the motion and denial of the application. All meetings shall be open to the public and the landmarks and design commission shall keep minutes of its proceedings, and the minutes and a copy of its adopted rules shall be kept on file in the office of the city clerk and be open to inspection by the public. [Ord. 4245, 2000.]

15.28.070 Landmarks and design commission staff. (1.45.320)

Assistance to the landmarks and design commission shall be provided by the department of community development, which shall assign a professionally qualified member of the department's staff, or a qualified consultant, to act as a preservation planner to assist the landmarks and design commission in fulfilling its historic landmarks preservation duties. Under direction of the landmarks and design commission, the preservation planner shall be the custodian of the landmarks and design commission's historic landmarks records. The preservation planner shall conduct official correspondence, assist in organizing the landmarks and design commission, and carry out the technical work of the landmarks and design commission in all historic landmarks preservation activities. [Ord. 4245, 2000.]

15.28.080 Ellensburg landmarks register. (1.45.360)

There is hereby created an Ellensburg landmarks register.

A. Criteria for eligibility to the register. Any building, structure, site, object, or district may be designated for listing in the Ellensburg landmarks register if it is significantly associated with the settlement, development, architecture, politics, economy, social history, archaeology, or cultural heritage of the community; retains integrity of location, setting, design, materials, workmanship, feeling, and association; is at least 50 years old; and if it meets at least one of the following criteria:

1. Is associated with events that have made a significant contribution to the broad patterns of local, state, or national history.
2. Is closely linked with the life of a person important in the history of the city, state, or nation.
3. Embodies the distinctive visual characteristics of an architectural type, period, style, or method of construction.
4. Is an outstanding work of a designer, builder, or architect.
5. Has yielded, or may be likely to yield, important archaeological information related to history or prehistory.
6. Because of prominent spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood and contributes to the distinctive identity of that neighborhood.

B. Process for designating properties to the landmarks register (a Type II review process).

1. Any person may nominate a building, structure, site, object, or district for inclusion in the Ellensburg landmarks register. Members of the landmarks and design commission or the landmarks and design commission as a whole may generate nominations. In its designation program, the landmarks and design commission shall consider the Ellensburg historic resource inventory and the Ellensburg comprehensive plan. Owner(s') consent is required before the landmarks and design commission's consideration of the nomination.
2. Nominations shall be made on forms provided by the landmarks and design commission. Completed nominations received by the commission will be scheduled for review within 15 working days of receipt.
3. The landmarks and design commission shall consider the merits of the nomination at a public meeting, in accordance with the criteria for eligibility set forth in subsection (A) of this section, and according to the nomination review standards established in rules.
4. Adequate notice shall be given to the general public, the property owner(s), the author of the nomination, and lessees, if any, prior to the public meeting, according to standards for public meetings established in rules and in compliance with Chapter [42.30](#) RCW, Open Public Meetings Act. Such notice shall include publication in a newspaper of general circulation in Ellensburg and posting of the property.
5. Whenever the landmarks and design commission finds that a nominated property meets the criteria set forth in subsection (A) of this section, it shall make a recommendation to

the director that the property should be officially listed as a landmark, landmark site, or landmark district. Within 10 working days, the director shall review the record and the landmarks and design commission and recommendation and shall render a decision on whether or not to officially list the property and notice of the decision shall be sent to the property owner(s), the author of the nomination, any lessees, the preservation planner, and the Ellensburg city council.

6. For individual landmark designations, the landmarks and design commission shall include in its designation recommendation the applicable criteria, a legal description of the property, and a list of all significant features that contribute to its historic character.
7. For landmark district designations, the landmarks and design commission shall include in its designation recommendation the applicable criteria, a description of the boundaries of the district, and a list of all buildings, structures, sites, and objects which contribute to its historic character.
8. Whenever the director rejects the nomination of all or any part of property, the director shall, within 10 working days, issue a written decision including reasons supporting the determination that the criteria set forth in subsection (A) of this section have not been met. Notice of the decision shall be sent to the property owner(s), author of the nomination, any lessees, the preservation planner, and the Ellensburg city council.
9. The director's decision on a COA may be appealed to the city council in an open record appeal hearing.
10. Properties listed in the Ellensburg landmarks register shall be recorded on official zoning records with an "LR" (for landmark register). This designation shall not change or modify the underlying zone classification.

C. Downtown and residential historic districts.

1. The existing downtown historic district, defined in ECC 15.30.060(B) and hereafter known as the "downtown historic district," and the existing residential historic district, defined in ECC 15.30.060(C) and hereafter known as the "First Railroad Addition historic district," are hereby designated as Ellensburg landmark districts. The geographic area encompassed by each district is identified on the map attached to and made a part of this chapter by reference.
2. The commission shall compile existing historical data and property records, prepare Ellensburg landmarks register nomination forms, and create complete landmark files for each of the landmark districts.
3. The provisions of ECC 15.28.090 and 15.28.10(C) shall hereafter apply to the downtown historic district and the First Railroad Addition historic district.

D. Removal of properties from the register. In the event that any designated landmark property is no longer deemed eligible for inclusion in the register owing to loss of historic integrity, the landmarks and design commission may initiate removal of such designation by the same procedure as provided for in establishing the designation in subsection (B) of this section. [Ord. 4245, 2000.]

15.28.090 Review of changes to landmarks register properties. (1.45.380)

A. Review required.

1. No person shall alter, repair, enlarge, newly construct, relocate, or demolish any registered landmark, or any property located within a landmark district, nor install any exterior sign pursuant to subsection (A)(2) below, without review by the landmarks and design commission and approval of a certificate of approval (COA).
2. This review shall apply to all exterior features of the property visible from a public right-of-way. This review applies whether or not a permit from the city of Ellensburg is required.
3. Review of alterations to Ellensburg landmarks register properties under this chapter is in lieu of design review required for both major and minor projects and sign review per ECC 15.21.050(B).

B. Exemptions. The following activities are exempted from landmarks review and do not require a COA: maintenance and repairs in-kind which do not alter the appearance of exterior features visible from a public right-of-way and do not utilize substitute materials; repairs to or replacement of utility systems which do not alter exterior features visible from a public right-of-way; and all interior work. Changes to existing owner-occupied single-family homes, both exterior and interior, are exempted from landmarks review, and do not require a COA. Single-family homes applying for incentives are not exempt.

C. Review process - (a Type II review process).

1. Requests for review and issuance of a certificate of approval.
 - a. Application for a COA shall be made by filing an application for such certificate with the preservation planner on forms provided by the department. A written description of materials required for the landmarks and design review, including but not limited to site plans, elevations, and material samples, shall be provided to the applicant. Preliminary plans may be submitted to the preservation planner for review and an advisory opinion.
 - b. If an application is made to the department of community development for any permit which affects a designated landmark, or a property located in a landmark district, the building official shall promptly refer such application to the preservation planner, and such shall be deemed an application for a COA if accompanied by the additional materials required for COA review. No city permit shall be issued, nor work begun, until the landmarks and design review process has been completed and a COA has been issued pursuant to this chapter.
2. Landmarks and design commission review.
 - a. At a regularly scheduled public meeting, the landmarks and design commission shall review the proposed work according to the design standards and guidelines set forth in ECC 15.53.020 and other relevant sections of Article 5 of this title. After concluding the public meeting, the landmarks and design commission shall make a recommendation to the director as to approval or disapproval of the application. Recommendations to approve

projects shall be based upon appropriateness of design as reflected in said standards and guidelines.

- b. The landmarks and design commission may recommend approval with or without conditions or recommend disapproval of an application. The recommendation of the landmarks and design commission shall be transmitted to the director within 15 working days of the date of receipt of a completed application. The landmarks and design commission's findings in support of any recommendation shall be in writing and shall cite the applicable design standards.
- c. The director shall then review the record and the recommendation and findings of fact from the landmarks and design commission and make a decision to issue a COA, and such certificate shall be issued to the applicant forthwith and the preservation planner shall promptly transmit a copy of such certificate to the building official.
- d. If the director denies the application, the applicant shall be notified of such denial, including the reasons why approval of the application is not warranted.
- e. The director's decision on a COA may be appealed to the hearing examiner in a closed record appeal hearing.

D. Demolition. Application for a COA for whole or partial demolition of a property listed in the Ellensburg landmarks register, or located in an Ellensburg landmark district, shall be reviewed by the commission in accordance with the procedures set forth in subsection (C) of this section and ECC 15.28.100 with the following exceptions:

1. The landmarks and design commission shall meet initially with the applicant to consider alternatives to demolition, including available incentives for preservation. These negotiations may last no longer than 90 days from the first meeting of the landmarks and design commission, unless either party requests an extension.
2. If no request for an extension is made and the existence of a condition of unreasonable economic return, as set forth in ECC 15.28.100, has been proven and no alternative to demolition has been agreed to, the landmarks and design commission shall make a recommendation for approval to the director. The preservation planner shall promptly transmit a copy of such certificate to the building official.
3. The landmarks and design commission may recommend conditions of approval including, but not limited to, mitigation measures.
4. The director shall review the record and the landmarks and design commission recommendation and shall make a decision to approve the issuance of a COA or to deny the demolition application
5. Any person aggrieved by any action of the director denying or approving a demolition request may file a notice of appeal as set forth in Chapter 15.23, however, such appeal shall be to city council rather than to the hearing examiner.

15.28.100 Evaluation of economic impact. (1.45.420)

- A. In making its recommendation, the landmarks and design commission shall, when requested by the property owner, consider evidence of economic impact on the owner of the denial or partial denial of a COA. In no case may a COA be denied, in whole or in part, when it is established that the denial will, when available economic incentives are utilized, deprive the owner of a reasonable economic use of the property, and there is no viable and reasonable alternative which would have less impact on the significant features specified in the designation.
- B. To prove the existence of a condition of unreasonable economic return, the applicant must establish, and the landmarks and design commission must find, both of the following:
 - 1. The landmark is incapable of earning a reasonable economic return without completing the alterations or demolition proposed.
 - 2. The owner has the present intent and the secured financial ability, demonstrated by appropriate documentary evidence, to complete the proposed alteration or, in the case of demolition, to complete any proposed new construction.
- C. The applicant shall establish a condition of unreasonable economic return with appropriate documentation that may include:
 - 1. Proof of current level of economic return, including: amount paid for landmark; annual gross and net income from the property for the last 5 years; remaining balance on mortgage and annual debt service; real estate taxes for previous 4 years and most recent assessed valuation; appraisals obtained during last 3 years; fair market value immediately prior to and after landmark designation; form of ownership; or federal income returns relating to the landmark for the last 2 years.
 - 2. Proof of lack of marketability, including: reasonableness of asking sales price; offers received within previous 2 years; real estate broker or firm engaged to sell or lease property; or advertisements placed for sale or lease.
 - 3. Proof of no feasible alternative uses that could earn a reasonable economic return, including: report from a licensed engineer or architect with historic preservation experience attesting to the landmark's structural soundness and suitability for rehabilitation; cost estimates for proposed alteration and for compliance with landmarks and design commission's decision; estimated market value of property after proposed alteration and, in the case of proposed demolition, after renovation of landmark for continued use; testimony of an architect, developer, or real estate professional with experience in historic preservation as to economic feasibility of rehabilitation or reuse of landmark; unfeasibility of new construction around, above, or below landmark.
 - 4. Proof of lack of available and applicable economic incentives.
- D. Upon reasonable notice to the owner, the landmarks and design commission may appoint an expert to provide advice and testimony concerning the value of the landmark, the

availability of incentives, and the economic impacts of approval, denial, or partial denial of a COA.

- E. Any adverse economic impact caused intentionally or by willful neglect shall not constitute a basis for granting a COA. [Ord. 4245, 2000.]

15.28.110 Special valuation for historic properties. (1.45.700)

- A. There is hereby established and implemented a special valuation program for historic properties as provided in Chapter [84.26](#) RCW and Chapter [254-20](#) WAC.
- B. The Ellensburg landmarks and design commission is hereby designated as the local review board for the purposes set forth in Chapter [84.26](#) RCW and is authorized to perform all functions of a local review board authorized by Chapter [84.26](#) RCW and Chapter [254-20](#) WAC.
- C. The class of properties eligible to apply for special valuation in the city of Ellensburg means all properties listed on the Ellensburg landmarks register, or properties contributing to an Ellensburg landmarks register historic district, which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter [84.26](#) RCW.
- D. The landmarks and design commission shall adopt administrative rules for implementing special valuation and shall comply with all other local review board responsibilities identified in Chapter [84.26](#) RCW and Chapter [254-20](#) WAC.
- E. Any decision of the landmarks and design commission acting on any application for classification as historic property eligible for special valuation may be appealed to Superior Court under RCW [34.05.510](#) through [34.05.598](#) in addition to any other remedy of law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization. [Ord. 4323, 2002.]

15.29 Code Enforcement *(current Chapter 13.64)*

15.29.010 Notice – Correction order. (13.64.020)

If the city manager, or his designate, shall find that any of the provisions of this title are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this title to ensure compliance with or to prevent violations of its provisions. [Ord. 2810 § 36.04, 1970.]

15.29.020 Complaints. (13.64.040)

Whenever a violation of this title occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with

the city manager or his designate. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this title. [Ord. 2810 § 37.02, 1970.]

15.29.030 Penalty. *(13.64.060)*

Violation of the provisions of this title or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this title or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$300.00 or imprisoned for not more than 90 days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. [Ord. 2810 § 39.02, 1970.]

15.29.040 Separate offense. *(13.64.080)*

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists in, or maintains such violation may be found guilty of a separate offense and suffer the penalties herein provided. [Ord. 2810 § 39.04, 1970.]

15.29.050 Remedy by city. *(13.64.100)*

Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. [Ord. 2810 § 39.06, 1970.]

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